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EXTRAORDINARY

भाग II—खण्ड 3—उपखण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

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NEW DELHI, THURSDAY, JULY 1, 1971/ASADHA 10, 1893

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 1st July 1971

S.O. 2499.—Whereas the Central Government, in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) (hereinafter referred to as "the Act"), declared on the 12th January, 1971, the All Jammu and Kashmir Plebiscite Front to be an unlawful association;

And whereas the Central Government, in exercise of the powers conferred by sub-section (1) of section 5 of the Act, constituted on the 28th January, 1971, the Unlawful Activities (Prevention) Tribunal (hereinafter referred to as "the Tribunal"), consisting of Shri Justice Syed Murtaza Fazal Ali, Chief Justice of the High Court of Jammu and Kashmir;

And whereas the Central Government, in exercise of the powers conferred by sub-section (1) of section 4 of the Act, referred the issue of the declaration of the All Jammu and Kashmir Plebiscite Front as an unlawful association to the Tribunal on the 8th February, 1971, for the purpose of adjudicating whether or not there was sufficient cause for making the aforesaid declaration;

And whereas the Tribunal, in exercise of the powers conferred by sub-section (3) of section 4 of the Act, made an Order confirming the declaration referred to above on the 15th June, 1971;

Now, therefore, in pursuance of sub-section (4) of the Act, the Central Government hereby publishes the aforesaid Order of the Tribunal namely:—

ORDER

BEFORE THE UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL AT NEW DELHI

UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL

PRESENT

The Hon'ble Shri Syed Murtaza Fazl Ali, Chairman (Chief Justice, High Court of Jammu and Kashmir).

CASE NO. UAPT/1 OF 1971

Central Government *versus* The All Jammu and Kashmir Plebiscite Front

Mr. B. B. Lal—*for Central Government*.

Messrs M. A. Beg and G. M. Shah—*for defendants*.

DECISION

1. The Tribunal was constituted by virtue of a notification No. S.O. 572 dated 28th January, 1971, by the Central Government by virtue of the powers conferred on it by sub-section (2) of section 5 of the Unlawful Activities (Prevention) Act, 1967. The Unlawful Activities (Prevention) Act, being Act No. 37 of 1967, was passed on 30th of December, 1967. The Act was amended by Act No. 24 of 1969 on 13th August, 1969, by which the Act was applied to the State of Jammu and Kashmir and was to become enforceable from such date as the Central Government might fix by notification in the Government Gazette. On 30th August, 1969, the notification referred to in the aforesaid amendment Act was issued by the Central Government and the Act thus came into force in the State with effect from the 1st September, 1969.

For the purpose of brevity, it will be useful to refer to the following terms and names as their equivalent shown against them:—

- (1) Central Government as "the Government";
- (2) The All Jammu and Kashmir Plebiscite Front as "the Front";
- (3) The President and the Secretary of the Front as defendants No. 1 and 2 respectively;
- (4) The Statement of Facts accompanying the reference—"Plaint";
- (5) Reply to show cause notice by the Front "written statement";
- (6) The Unlawful Activities (Prevention) Act of 1967 as "the Act";
- (7) Witnesses for the Central Government—"CWs";
- (8) Witnesses for the defendants—"DWs";
- (9) Jammu and Kashmir State—"the State";
- (10) Notification dated 12th January, 1971, by which the Front has been declared to be an unlawful association as the "impugned notification";
- (11) Mirza Mohd. Afzal Beg as "Mr. Beg" Sri G. M. Shah as "Mr. Shah" and Sheikh Mohd. Abdullah as "Sheikh Sahab";
- (12) Government of Jammu and Kashmir as "the State Government".

2. *Constitution of the Tribunal and Introduction.*—The Act empowers the Central Government to ban any association if it is of the opinion that such association is or has become unlawful. The association can be banned by a notification in the official gazette if such association is declared to be unlawful. Section 3, sub-section (2) of the Act requires that every such notification issued under section 3 of the Act shall specify the grounds on which it is issued and such other particulars as the Central Government may

consider necessary. Sub-section (3) of section 3 provides that no such notification shall have effect until the Tribunal has, by an order made under section 4, confirmed the declaration made therein and the said order is published in the Official Gazette. Proviso to sub-section (3) of section 3, however, confers special powers on the Central Government to give immediate effect to the notification, if in its opinion, circumstances exist which render it necessary to declare an association to be unlawful with immediate effect for reasons to be stated in writing. Under Section 4, sub-section (1), the Central Government is required to make a reference to the Tribunal within 30 days from the date of the publication of the notification the purpose of adjudicating whether or not there is sufficient cause for declaring an association unlawful. Section 4(2) lays down that on receipt of the reference under sub-section (1), the Tribunal has to effect notice in writing to the association to show cause within 30 days from the date of service of notice, why the association should not be declared unlawful. Sub-section (3) of section 4 provides that after considering the cause if any shown by the association, the Tribunal shall hold an inquiry in the manner specified in section 9 and after calling for any further information as it may consider necessary, decide whether or not there is sufficient cause for declaring the association to be unlawful. This sub-section further requires that the Tribunal must give its decision within six months from the date of the issue of the notification. This provision further confers the power on the Tribunal either to confirm the declaration made in the notification or to cancel the same. Sub-section (5) of section 5 gives plenary powers to the Tribunal to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it holds its sittings. This provision is, however, subject to section 9 of the Act which is a specific section, which lays down the procedure to be adopted by the Tribunal in holding the inquiry into the reference made by the Central Government. According to section 9, the procedure to be followed by the Tribunal shall, so far as may be, be the procedure laid down in the Code of Civil Procedure, 1908, for the investigation of claims. Section 9 further makes the decision of the Tribunal final. These are some of the provisions with which we are concerned in the present inquiry. The Front was declared to be an unlawful association by a notification No. S.O. 227 dated 12th January, 1971 (22nd Pausa, 1892 S.F.), issued by the Central Government and published in the Gazette of India Extraordinary, Part II—Section 3—sub-section (ii). The notification referred to above runs thus:—

“S.O. 227—Whereas the All Jammu and Kashmir Plebiscite Front is an association—

- (a) which encourages or aids persons and its sympathisers to undertake unlawful activities within the meaning of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967);
- (b) the members of which undertake such activities;
- (c) such persons and sympathisers or members aforesaid, for example, Sheikh Mohammad Abdullah, Mirza Mohd. Afzal Beg and Shri G. M. Shah have, on diverse occasions, (for example, Sheikh Mohammad Abdullah at Kishtwar on 1st May, 1970, and at Srinagar, on 13th July, 1970, Mirza Mohd. Afzal Beg at Baramulla, on 13th September, 1970 and at Hazratnagar, on 26th October, 1970, and Shri G. M. Shah at Damhal, Anantnag district, on 26th October, 1970) by words, either spoken or written or by signs or visible representation supported a claim to bring about the secession of a part of the territory of India, namely, the State of Jammu and Kashmir (hereinafter referred to as the State), from the Union and asserted claim to determine whether or not such part will remain a part of the territory of India;
- (d) such persons and sympathisers or members aforesaid, on such or other occasions, either demanded or questioned the sovereignty and territorial integrity of India by raising questions or in writing to the effect that the State is not a part of India and that the question of accession of the State to India remains to be decided;
- (e) which has, for its object, a so-called settlement of the question of the State to India through a plebiscite and the said object, which amounts to an assertion of a claim to determine whether the State is or will remain a part of India, is an unlawful activity within the meaning of the said Act.

And whereas for all or any of the grounds set out in the preceding paragraph, as also on the basis of other facts and materials in its possession which the Central

Government considers to be against the public interest to disclose, the Central Government is of opinion that the said Front is an unlawful association;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the All Jammu and Kashmir Plebiscite Front to be an unlawful association.

[No. F. 11/1/71-K.(Part 1).]

(Sd.) ASOKA SEN,

Joint Secy. to the Govt. of India."

On the same date another notification was issued by the Central Government whereby it directed that the declaration of the association to be unlawful would take effect from the date of its publication in the official gazette, that is to say, from the 12th of January, 1971. This notification is purported to have been issued under the proviso to section 3 of the Act. The Tribunal, however, is concerned with the question of examining as to whether or not there is sufficient cause for making the declaration that the front is an unlawful association under the first notification referred to above. On 8th of February, 1971, the Central Government in pursuance of sub-section (1) of section 4 of the Act, made a reference to the Tribunal for the purpose of adjudicating whether or not there is sufficient cause for declaring the Front as an unlawful association. Along with the reference, which is made by a letter No. F. 11/1/71-K (Part-I), dated 8th February, 1971, a copy of the impugned notification as also a detailed statement of facts has been filed before the Registrar of the Tribunal, who was appointed by the Government a few days earlier.

The Central Government also filed a large number of documents comprising Annexures A, B, C and D. Out of these documents, Annexures A, B and C have been marked exhibits separately.

The Tribunal, which was in Aligarh when it was constituted by the Central Government, decided to hold its preliminary sittings at New Delhi from the 12th of February, 1971 and on this date, the Tribunal held its sitting at Vigyan Bhavan, where the reference and the papers accompanying it were produced before the Tribunal. On the 15th of February, 1971, the Tribunal after hearing the counsel for the Central Government, ordered that notices be given to the defendants by (a) registered post, (b) by personal service on the President and the Secretary at Delhi, and (c) by affixation of the notice on the office of the Front at Mujahid Manzil, Srinagar. In pursuance of this order, notices with regard to items (a) and (b) were actually issued on 17th of February, 1971 and regarding item (c), the notices were sent from Jammu on 18th of February, 1971, to be served through District Judge, Srinagar. Thereafter the Tribunal left for Jammu because it was not necessary to hold any further proceedings in the inquiry until the defendants had appeared. In order to facilitate the receipt of the notices, the Tribunal directed Shri M. K. Tandon, Deputy Registrar, New Delhi section, to stay at Vigyan Bhavan during its absence from Delhi. The defendants appeared before the office of the Tribunal at New Delhi on 26th of February, 1971 and were supplied with the necessary copies of the documents comprising Annexures B and C. On the 10th March, 1971, the defendants prayed for extension of time for filing the written statement and their prayer was granted by the Tribunal as a result of which they were asked to file their written statement upto the 25th of March, 1971. On the 25th of March, 1971, the written statements were filed by the defendants. The Tribunal moved to Delhi for the purpose of regular hearings on the 25th March, 1971 and started its regular hearings from the 26th March, 1971 with a few gaps for evidence of the parties. The evidence of the parties and their arguments were finally concluded on the 22nd of April, 1971, after which the Tribunal reserved its judgment and moved to Jammu on the 25th April, 1971. During the course of the first hearing, that is to say, on the 26th March, 1971, the Tribunal with the consent of the parties decided to sit on all working days from 10-30 A.M. to 1-00 P.M. and 2-30 P.M. to 4-30 P.M. The Tribunal, however, at the request of Mr. Beg, defendant No. 1 and with the consent of the counsel for the Central Government decided to sit on Fridays from 10-30 A.M. to 12-00 NOON only. On the same date, the Tribunal decided to adopt the procedure relating to civil suits under the Code of Civil Procedure as far as practicable as required by section 9 of the Act. At the request of the defendants, the two written statements filed by them, which were identical in nature were consolidated as one and were referred to as written statement in the case. Furthermore, the two documents contained in Annexure A having been admitted by the defendants were marked as Exhibits 1 and 2. Similarly, all the documents in Annexure C having been admitted by the defendants were marked as Exhibits 3 to 41. As regards the documents in Annexure B, the defendants wanted to inspect and examine them before they were in a position to admit them. The Tribunal, therefore, gave them time for this purpose and adjourned the

hearing to 29th March, 1971. On the 29th of March, 1971, however, the defendants expressed their inability to admit the documents contained in Annexure B and requested that the Central Government may be directed to prove them in accordance with law. Consequently, after hearing counsel for the parties, the Tribunal framed four issues. Mr. Lal, counsel for the Central Government, was asked to file list of witnesses within two days and produced them on the 7th of April, 1971. The proceedings were, therefore, adjourned to 7th of April, 1971. On the 7th of April, 1971, the Tribunal recorded the statements of Messrs G. R. Wani, Surjeet Singh, Dwarika Nath, Satvir, Nand Raj and Abhimaneau, witnesses for the Government and the proceedings were adjourned to the next day that is, 8th April, 1971 for recording further evidence. On 8th April, 1971, the statement of Shri Jaanki Nath, witness for the Central Government, was recorded and with the consent of the parties the case was adjourned to 10th April, 1971, on which date the statements of Messrs Niranjan Nath Hall, Nasir-ud-Din, dar, Hakim Hasan Ali, Tej Krishan Raina, Ghulam Qadir Pardesi, Ghulam Mohd. Butt, Mohd. Amin Andrabi, Ghulam Mustofa Khan and Mufti Saif-ud-Din, witnesses for the Central Government were recorded and with this the evidence of the Central Government was closed. The counsel for the Central Government was, however, directed to keep the tape-recorders concerned ready with their operators to be played if and when necessary. Mr. Beg undertook to produce his evidence on 13th of April, 1971 and therefore the case was adjourned to that date. Further Mr. Beg stated that he had no objection to the photostat copies of the speeches being marked as Exhibits and therefore, they were marked as Exhibits 100—113. On the 13th of April, 1971, Mr. Beg produced himself only for evidence and his statement was recorded by the Tribunal. Mr. Beg closed his evidence and the case was adjourned to 20th April, 1971 for arguments. On the 13th April, 1971, the counsel for the Central Government raised a preliminary objection to issue No. 3 on the ground that the Tribunal had no jurisdiction to decide the issue relating to the constitutionality of the Act under which the Tribunal was appointed. The arguments were concluded on the 22nd April, and on that date, Mr. Beg after having considered the preliminary objection frankly conceded that the Tribunal being a creature of the statute cannot go into the constitutionality of the Act. Reliance was placed on a decision of the Supreme Court reported in AIR 1966 SC 1089, which according to Mr. Beg clinched the matter so far as issue No. 3 was concerned. In view of the concession made by Mr. Beg, issue No. 3 was dropped as not pressed. The Tribunal further decided with the consent of the parties that as it would be in Srinagar when the judgment was to be announced, it would sign the judgment at Srinagar and send the judgement to New Delhi to be pronounced by the Registrar at New Delhi. But no second thought, however, the Tribunal has decided to move to New Delhi in order to announce the judgment itself in open court and sign the same in presence of the parties, previous notice of which has already been given to the parties.

3. *Constitutional history of the State.*—Before detailing facts presented by the parties before the Tribunal, it may be useful to make a brief reference to the constitutional history of the State with a view to understand the case of the parties in their true and proper perspective. With the creation of the dominion of India and Pakistan, the law which was to be the Constitution was the Government of India Act, 1935, as amended by the India (Provisional Constitution) Order, 1947, which amended certain provisions of the Government of India Act, 1935. In the instant case, we are actually concerned with section 6 of the Order which provides for an Indian State to accede to one of the two dominions after executing an Instrument of Accession. Section 6 of the Order also provides for the acceptance of the Instrument of Accession by the Governor General. The India (Provisional Constitution) Order, 1947 was passed on 14th August, 1947. A few months after the passing of this order, tribal raiders sponsored and supported by Pakistan invaded the territory of the State resulting in serious chaos and confusion which brought the Government to a standstill. In view of such an extreme emergency, His Highness Maharaja of Kashmir was compelled by the force of circumstances to make an offer of accession to the Governor General of India in order to protect the life and liberty of its citizens. This offer was made on 26th October, 1947 through an Instrument of Accession which was finally accepted by the Governor General of India on 27th of October, 1947. It may be noted that under the Instrument of Accession, the ruler of the State had surrendered the control of three subjects to the dominion of India, namely, External Affairs, Communications and Defence.

The Governor General after accepting the Instrument of Accession sent military aid to the Maharaja by a letter dated 26th October, 1947 and in the passing, mentioned the fact that the question of accession would be decided in accordance with the wishes of the people as soon as law and order had been restored. It seems to the Tribunal that the offer for holding the plebiscite made by the Governor

General was actuated by the desire to be fair to His Highness the Maharaj because he had made the accession in a great hurry and under the fear of the brutal invasion by the tribal raiders from Pakistan. The reply of the Governor General, however, did not lay down any particular mode in which plebiscite was to be held nor any time limit was fixed. Thus, it would be difficult for the Tribunal to hold that the offer of ascertaining the wishes of the people had any statutory force. On the 5th March, 1948, the Maharaja under pressure of the people issued the proclamation by which a responsible government of a Council of Ministers headed by the Prime Minister was formed in order to take steps to constitute a National Assembly based on an adult franchise to frame a separate constitution for the State. Thereafter, Yuvraj, Karan Singh (at present Dr. Karan Singh, Minister of Tourism and Civil Aviation) issued a proclamation directing that the Constitution of India to be adopted by the Constituent Assembly in so far as it was applicable to the State of Jammu and Kashmir. In pursuance of his proclamation, the first Constitution (Application to Jammu and Kashmir) Order of 1950 was promulgated by the President of India under clause 1 of Article 370 of the Indian Constitution. Subsequently, a Constituent Assembly was convened on 5th November, 1951 and on 15th February, 1954, the Constituent Assembly passed a resolution adopting the report of the drafting committee and the annexure thereto and thereby gave its concurrence to the application of certain provisions of the Constitution of India to the State in the manner indicated in the annexure. This resolution was adopted by the Constituent Assembly unanimously. Ultimately the State Constitution was formed in 1956 and came into force from 26th January, 1957. Under section 3, the State of Jammu and Kashmir is an integral part of India. It would thus appear that the accession of Kashmir to India was finally ratified by the Constituent Assembly which represented the people of the State. Mr. Beg, President of the Front, in one of his speeches on 9th August, 1970, reported in the Press Note Ex. 19 admitted in clear terms that at the time when Sheikh Saheb was arrested, there was a duly elected Assembly and the Indian Government ought to have got a vote of no-confidence passed against him instead of arresting him. The popular Government which was installed in the State was headed by Sheikh Saheb and included Mr. Beg also as one of the colleagues. In August 1953, however, Sheikh Saheb was arrested along with some of his colleagues including Mr. Beg. In August, 1955, the Front was formed with the object of ending the element of uncertainty by bringing about a free and impartial plebiscite in order to decide the future of the State by its people. This is the short historical background against which the cases of the parties have to be studied.

4. *Case of the Government.*—The case of the Government set in the notification as also in the plaint may be summarised as follows:—

- (1) that the Front is an association which encourages and aids persons and its sympathisers to undertake unlawful activities.
- (2) that such persons like Sheikh Saheb, Mr. Beg and Mr. Shah have on various occasion and at various places by their speeches and acts supported a claim to bring about cession of a part of the territory of India, namely, the State and asserted a claim in which the State might not remain part of India.
- (3) that these persons have on various occasions questioned the sovereignty and territorial integrity of India by advocating that the State is not the integral part of India and the question of accession of the State to India still remains undecided.
- (4) that the association has for its objects also called settlement of the question of accession of State to India through a plebiscite and the securing of the said object obviously implies that the State may or may not remain a part of India.
- (5) that in order to achieve the aforesaid objects Mr. Beg and his associates tried to whip up a mass support by taking within the fold of the party secessionists who found a ready platform to give vent to their anti-Indian feelings. It was further alleged that Sheikh Saheb completely identified himself with the aims and objects of the Front and did not hesitate to exploit the religious susceptibilities of muslims.
- (6) that there are materials to show that the Front has been receiving aid from the Government of Pakistan.
- (7) that the Front organised meetings at various places to whip up the Front propaganda for claiming a plebiscite in order to determine whether or not the State should remain part of India. Forceful speeches

by leaders of the Front and Sheikh Saheb were made, pamphlets, posters and other writings containing the speeches were printed and freely distributed to the people.

(8) that the main points made out in the speeches delivered by Mr. Beg. Sheikh Saheb and others were as follows:—

- (a) The accession of the State was provisional and not final.
- (b) The question whether the State would remain part of India would have to be decided through a plebiscite.
- (c) Article 370 of the Constitution of India was purely transitory and could become final only after a regular plebiscite is held.
- (d) The citizens of the State are a separate nation and have an inherent right to decide their future.
- (e) The people of Kashmir started their freedom struggle from 1931 which ultimately succeeded for a short while in 1947 when the Sheikh Saheb headed the Government, but some of the colleagues of Sheikh Saheb sold their freedom for their selfish ends and declared accession to be irrevocable.
- (f) The head of the administration was the stooge of the Government and did not represent the people but tried to rule the State with the help of the Indian army.
- (g) that the people of the State should join the Front in large numbers and demand plebiscite.
- (h) That the people of the State should continue their struggle even if they have to lay down their lives for it.
- (i) That the Kashmiri Muslims should take note of communal riots in India and they should rally round the Front in order to save their life and property.
- (j) The years of the association with India have brought nothing but misery and economic privation for the people of the State.
- (k) The Front stood for the free movement for people to and from Pakistan and wanted the opening of the Rawalpindi route.
- (l) The Muslims of Kashmir should take clue from the Islamic history and continue the crusade against India without fearing the Indian Army or police because Islam teaches men to fear God and none else.
- (m) The Front had decided to participate in the elections so that it could carry on the struggle for the right of self determination from the floor of the Assembly and appeal to the people to support in large numbers so that on being returned to power, the Front would be in a position to wreck the Constitution from inside.
- (n) Pakistan is an essential party to the Kashmir dispute and no lasting solution of the dispute could be reached without Pakistan.

Some additional facts were mentioned in the second notification issued by the Central Government by which the declaration under the impugned notification was to take effect from the date of the publication of the said notification, but the Tribunal is not concerned with these allegations because it is only the declaration made by impugned notification that has to be examined by the Tribunal. It may be stated here that the Government has led no evidence whatsoever in order to prove the additional allegations made in the second notification nor was the same pressed in the course of the arguments advanced by Mr. Lal appearing for the Government.

5. *Case of the defendants.*—The defendants in their written statements adverted to the constitutional history of Kashmir and particularly took the relationship of India with Kashmir in the light of the Instrument of Accession, the pledges and the promises given by the Indian leaders and other connected facts to show that the object of the Front was merely to terminate the element of political uncertainty prevailing in the State. Tribunal has already given the constitutional history of the State in the preceding paragraphs and it is not necessary to repeat them here. It may however be necessary to refer to the promises and pledges mentioned by the defendants in the written statements which form the sheet anchor of the arguments of Mr. Beg.

In the first place, reliance was placed by the defendants on the reply of the Governor General Lord Mountbatten dated 22nd October, 1947 in reply to the letter of the Maharaja for accession (vide White Paper of J. & K., pages 46-47). The reply was to the effect that when law and order would be restored in Kashmir, the question of accession would be decided by reference to the people. A similar intention was expressed by the Government of India when it informed the Prime Minister of England on the question of giving aid to Kashmir. Reference was also made to the telegram dated 28th October, 1947 by Prime Minister Nehru to Prime Minister of Pakistan in which he made it clear that the accession of Kashmir was subject to reference to the people of the State and their decision thereon (White Paper, page 48). Reliance was also placed on a Radio Broadcast of Prime Minister Nehru dated 2nd January, 1948, where he declared that the fate of Kashmir is to be decided by the people alone after law and order is restored. In his broadcast, the Prime Minister said that he would have a referendum under the auspices of U.N.O (vide White Paper, Page 55). A similar statement is to be found in the complaint filed by India to the Security Council against Pakistan (vide White Paper, page 77, para 6). Reference was also made to the speech of Shri N. Gopalaswamy Ayyangar on 15th January, 1948, where he announced that accession would be finally settled by a plebiscite as soon as peace is restored. It was also emphasised by Mr. Ayyangar that the question of future of Kashmir and the question as to whether it would accede to India or Pakistan was a well recognised one. On the 25th of January, 1948, Mr. M. C. Setalvad, a member of the Indian delegation to the Security Council in the course of his speech reiterated that the accession of Kashmir to India was accepted only on the condition that after peace has been restored, the expression of popular will should be ascertained in a proper manner (A. G. Noorani's "The Kashmir Question", pages 38-39). In the White Paper of 1948, Part IV, under the heading "India's Objectives", it is mentioned that in Kashmir as in other cases of disputed accession, the will of the people must prevail (White Paper, page 45). Finally reliance was placed on the resolutions of the Security Council with regard to the Kashmir issue and the agreement of August 13, 1948 and January 5, 1949 which also speak of the accession to be confirmed by a plebiscite. It is not out of place to notice here that all these promises or pledges, as the defendants would call them, do not have any legal or statutory force. Furthermore the gist of the promises or pledges made by Indian leaders from time to time is that the people should be given a chance to express their will whether they are for ratifying the accession or not. Plebiscite was not the only mode which is contemplated either by the reply of the Governor General or in the speeches of other leaders. Apart from this, the promises were made at a time when peace and calm had not been completely restored and a portion of the territory of Kashmir was still in occupation of Pakistan which it had to vacate before plebiscite could take place. Unfortunately, however, the events moved so slowly that it rendered the promises made by the Indian leaders completely abortive. Nevertheless, the people of Kashmir through a duly represented Assembly, namely, the Constituent Assembly, ratified the accession and framed the State Constitution which made accession a completely closed issue. Finally, after the framing of the Constitution, there have been three elections, namely, in 1957, in 1962 and in 1967 and no evidence has been led before the Tribunal to show that these elections were rigged. The people thus through their elected representatives have ratified the accession on three occasions after the coming into force of the State Constitution. The defendants have averred that elections are no substitute for plebiscite but have not gone beyond that. So the fact remains that the will of the people had been ascertained at the time when the accession was ratified and even thereafter when the three elections were held.

Thus it was however contended by the Front that was against the background of the aforesaid promises and the constitutional relationship of Kashmir with India that the Front propagated and advocated plebiscite to end the element of uncertainty. It was thus contended by the Front that their activities were protected by a bona fide belief or mistaken impression regarding the determination of future of Kashmir. The defendants further alleged that in view of the peculiar constitutional status of Kashmir, no question of throwing a challenge to the sovereignty or territorial integrity of India arose.

It was next alleged that the Front was a very popular party with a large following comprising members of all communities and its aims and objects were as follows:—

- “(a) Early termination of political uncertainty in the State and help establishing lasting peace in the sub-continent.

- (b) The aim and object to be achieved by all peaceful and constitutional means.
- (c) Activities of the Front to be confined to the part of the territory of the State on the Indian side of the cease fire line.
- (d) Membership open to the citizens of the State, irrespective of caste, creed or sect.
- (e) Faith in 'democratic way of life' and in right of self-determination.
- (f) Cordial relationship between India and Pakistan.
- (g) Supremacy of rule of law in the State; and
- (h) Complete communal harmony, etc., etc."

The Front insisted on its followers rigid adherence to the adoption of peaceful methods and legitimate policies and it lent its influence and support to the Government in the maintenance of law and order and communal harmony. The defendants have alleged in their written statement that it was through their interference that the Engineering College trouble, the Shia Sunni trouble and police firing at Id gah were controlled. The defendants further admitted that in March 1969, the Front decided to contest elections at all levels and this decision was confirmed by the General Council on 25th and 26th May, 1969. The Front further denied the allegation that they had decided to contest the elections in order to wreck the Constitution, when in fact they had made it clear that they were going to fight the elections within the framework of the Indian Constitution. The defendants also alleged that the act of the Government in banning the party was actuated by malice as the Government wanted to prevent the defendants from participating in the elections. In this connection the defendants have given the sequence of the dates to show that the impugned notification almost coincided with the decision of the Front to participate in the elections and the date of the Parliamentary elections. The Front further challenged the constitutionality of the Act on a very large numbers of grounds which are not relevant for the purpose of this case in view of the fact that Mr. Beg did not press issue No. 1 which has been dropped. The Front also took the stand that it stood for Indo-Pak amity, communal harmony and achievement of their objectives through peaceful and constitutional means. The defendants further contended that the right of self determination does not imply either cession or secession but it merely emphasised the right of the people of Kashmir to decide their own future. The defendants further denied that they had taken in their fold any secessionist elements or that they were receiving any aid from Pakistan. They in fact alleged that they have sufficient funds from other sources and it was not necessary for them to take any aid from Pakistan. The defendants while admitting the holding of numerous meetings and circulation of pamphlets and posters maintained that these acts were directed towards achieving Indo-Pakistan amity, communal harmony and absolute faith in democracy and rule of law and finalisation of the accession issue. The defendants denied the allegation of the Government that the leaders of the Front had roused the sentiments of the people in order to exploit them for political purposes. The defendants also contended that they did not indulge in anti-social activities like strikes, mass hartals and fasts, but followed the peaceful and constitutional methods in the attainment of their objectives and in fact formed a Legal Defence Committee to aid the poor litigants. The defendants, however, admitted that according to them, the accession was only provisional and the Pakistan was a necessary party to the Kashmir issue and tried to justify the same on a number of grounds which have been discussed above. The defendants then criticised the Government for the events leading upto the arrest of Sheikh Saheb in 1953 and claimed that the State Government has no roots in the people. The defendants also criticised the elections of 1952, 1962, and 1967 and said that these elections were rigged. The defendants further maintained that they had a fundamental right to express their views on any subject and their idea regarding the opening of the Pindi road to improve the economic condition of the State could not amount to an unlawful activity. Finally, while admitting the contents of the pamphlets and booklets published and circulated by the Front the defendants contended that the statements therein should be read with reference to the context and no generalisation should be made without considering the full facts mentioned therein. Lastly, the defendants indicated the position of the President of the Front, namely, Mr. Beg and brief record of his public career. Reference was also made to a petition under Article 32 of the Constitution of India which has been filed by the defendants before the Supreme Court challenging the constitutionality of the Act as violating Articles 13, 14, 19 and 21 of the Constitution of India.

On the allegations made above, the defendants sought to rebut the case sent by the Central Government.

After hearing the arguments of the parties and considering the nature of the pleadings, the Tribunal framed the following issues:—

Issues:

- (1) Whether the All Jammu and Kashmir Plebiscite Front is an unlawful association within the meaning of Section 2 of the Unlawful Activities (Prevention) Act? (OP: Central Government).
- (2) Whether on the facts and circumstances of the case there is sufficient cause for declaring the aforesaid Front to be an unlawful association? (OP: Central Government).
- (3) Whether the Unlawful Activities (Prevention) Act is not constitutionally valid and has not been properly applied to the State? (OP: Defendants Plebiscite Front).
- (4) Relief."

It has already been mentioned above that so far as issue No. 3 is concerned, it was not pressed by Mr. Beg and was therefore dropped. It is therefore not necessary for the Tribunal to consider this issue. It may however be mentioned in the passing that in view of the decision of Supreme Court reported in the AIR 1966 SC 1029, it is manifest that the Tribunal has no jurisdiction to decide the constitutionality of the statute under which it has been created. In that case the majority consisting of Subbarao, Wanchoo and Sikri, JJ clearly observed as follows:—

"But an authority created by a statute cannot question the vires of that statute or any of the provisions thereof whereunder it functions. It must act under the Act and not outside it."

6. *Discussion and interpretation of sections 2 and 4 of the Act.*—Before however analysing the evidence adduced by the parties in proof of their respective cases, it is in the opinion of the Tribunal, necessary to examine the ambit and the scope of section 2 as also the nature and the extent of the powers conferred on the Tribunal under section 4 of the Act. The evidence will have to be judged in the light of the aforesaid provisions with a view to finding out as to whether or not the Front falls within the mischief of the provisions of section 2(b), (d), (g) and (f) of the Act. To begin with, it seems to the Tribunal that the words "unlawful activity" as defined in sub-section 2(f) has not to be construed as is meant in ordinary parlance, but bears a purely technical meaning as envisaged by the object and the purport of the Act. The words "unlawful activity" no doubt refer to something which is illegal opposed to public policy or invalid, but the unlawful activity in section 2(f) of the Act has been used in a special sense in order to cover particular types of activities with a view to advancing the object of the Act. The preamble to the Act runs as follows:—

"An Act to provide for the more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith."

A perusal of this preamble would clearly show that the intention of the Parliament was to provide a preventive legislation in order to arrest unlawful activities of individuals and associations which fall within the ambit and purview of the definition given in section 2(b), (d) and (f) of the Act. Section 2(b) runs thus:—

"(b) 'cession of a part of the territory of India' includes admission of the claim of any foreign country to any such part;

Section 2(d) runs thus:—

"(d) 'secession of a part of the territory of India from the Union' includes the assertion of any claim to determine whether such part will remain a part of the territory of India;"

Section 2(f) runs thus:—

"(f) 'unlawful activity,' in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),—"

Section 2(g) defines an unlawful association thus:—

“(g) ‘unlawful association’ means any association which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity.”

Having quoted the relevant provisions, let us now try to find out the exact meaning of these terms as intended by the Parliament. It may be pertinent to note that the word “cession” as defined in 2(b) has an absolutely different conception and a separate connotation than “secession” which is defined in 2(d) of the Act. Cession implies the giving up or ceding a part of the territory of India and definition is wide enough to include within its ambit admission of the claim of any foreign country to any such part. In other words, if an association or an individual either supports or sponsors or advocates ceding a part of the territory of India to some country or either expressly or impliedly admits the claim of any foreign country to such part, the said individual or association clearly falls within the mischief of section 2(d). As regards the word ‘secession’, it includes the assertion of any claim to determine whether such part will remain a part of the territory of India. The word “includes” clearly shows that the definition of secession in section 2(d) of the Act is not exhaustive but purely illustrative. Thus, if any association does an act which amounts to the assertion that a part of India will not remain with it, such an act amounts to secession as defined in the Act. It is not necessary for the application of section 2(d) that there should be a positive assertion or a positive act to sponsor that a part of India will not remain in its territory, but if anybody sponsors a claim which may involve this process, it will fall within the ambit of secession as defined by section 2(d) of the Act. Despite the definitions given above, the act of cession or secession would not amount to unlawful activity unless it fulfills the conditions given in section 2(f) of the Act quoted above. The definition of unlawful activity refers to an action taken by an individual or an association by any mode or method, that is, by an act or words spoken or written or by signs or by visible representation or otherwise, which is intended, or supports any claim to bring about the cession of a part of the territory of India or the secession of the part of the territory of India from the Union or which incites any individual or group of individuals to bring about the aforesaid results (cession or secession). Another essential ingredient of the “unlawful activities” is that the action must disclaim, question, disrupt or is intended to disrupt the sovereignty and territorial integrity of India. To put it in a more practical fashion, the essential ingredients of unlawful activities are as follows:—

- (1) There must be an action taken by an individual or an association.
- (2) Such an action is intended or supports any claim to bring about cession of a part of the territory of India or to bring about secession of a part of the territory of India from the Union or which incites any individual or group of individuals to bring about cession or secession.
- (3) The action falls within the ambit of unlawful activity even if it is based on any ground whatsoever, that is to say, no justification can be pleaded if the conditions mentioned in section 2(f) are fulfilled.
- (4) That the action disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India.

Unless the aforesaid conditions and ingredients are fulfilled, the action of an individual or an association cannot be held to be an unlawful activity within the meaning of section 2(f) of the Act. Section 2(g) further goes on to define an unlawful association so as to include any association which has for its object any unlawful activity or which encourages or aids persons to undertake any unlawful activity or whose members undertake such activity. The significant thing to note in the definition given in section 2(g) is that the Parliament intends to bring an association within the mischief of clause (g) of section 2 not so much with respect to the nature of the act as to the object or the end which it has, and the manner and mode in which the said object is promoted, is irrelevant. This fact has been mentioned particularly because one of the main arguments of Mr. Beg, defendants, has been that there is no evidence by the Government to prove that the Front had been guilty of any anti-social or anti-national activities, rather the evidence shows that the Front tried to achieve its objects through peaceful and constitutional means. The definition of unlawful activity in 2(g) is a complete answer to the contention raised by Mr. Beg because as the Tribunal has already indicated that what section 2(g) contemplates is not the method by which the object is achieved,

but the nature of the object and its promotion itself. Even if an association has for its object an unlawful activity but tries to achieve this object through peaceful and constitutional means without disturbing the state of law and order, the association would still be an unlawful association because the Section takes into account the object rather than the means to achieve that object. The Tribunal will advert to this aspect of the matter in the later part of the judgment when the final arguments of the parties are discussed. It may also be necessary to notice an important contention raised by Mr. Beg at this stage. It was argued that sub-clause (i) of section 2 of the Act clearly requires that there must be a positive intention to bring about the cession of a part of the territory of India or the secession of a part of the territory of India from the Union and thus the mere fact that the Front stood for a plebiscite under which Kashmir could decide to accede to India or to Pakistan or remain independent, would not fall within sub-clause (i) unless there was evidence to show that the Front asked the people to accede either to Pakistan or to remain independent and thus explicitly asked the people to encourage cession or secession. This is in the opinion of the Tribunal a very attractive argument and it will be dealt with in greater detail after the evidence led by the parties is analysed.

This brings the Tribunal to the discussion of the nature and the extent of the powers conferred on it by section 4 of the Act. Section 4 runs thus:—

“4. Reference to Tribunal.

- (1) Where any association has been declared unlawful by a notification issued under sub-section (1) of section 3, the Central Government shall, within thirty days from the date of the publication of the notification under the said sub-section, refer the notification to the Tribunal for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful.
- (2) On receipt of a reference under sub-section (1), the Tribunal shall call upon the association affected by notice in writing to show cause, within thirty days from the date of the service of such notice, why the association should not be declared unlawful.
- (3) After considering the cause, if any, shown by the association or the office-bearers or members thereof, the Tribunal shall hold an inquiry in the manner specified in section 9 and after calling for such further information as it may consider necessary from the Central Government or from any office-bearer or member of the association, it shall decide whether or not there is sufficient cause for declaring the association to be unlawful and make, as expeditiously as possible and in any case within a period of six months from the date of the issue of the notification under sub-section (1) of section 3, such order as it may deem fit either confirming the declaration made in the notification or cancelling the same.
- (4) The order of the Tribunal made under sub-section (3) shall be published in the Official Gazette.”

Section 4, sub-clause (1) clearly empowers the Tribunal to decide the question as to whether or not there is sufficient cause for declaring the association unlawful. The word “sufficient cause” has not been defined in the Act but it is a term of well known legal significance and its definition need not detain us any longer. But the important point to note is the context in which the words “sufficient cause” have been used. But before going to the context, it is necessary to examine sub-section (3) which provides the mode in which an inquiry into the matter has to be held by the Tribunal and the grounds on which the decision has to be given. The words ‘it shall decide whether or not there is sufficient cause for declaring the association unlawful’ clearly denote that the jurisdiction of the Tribunal to examine the validity of the notification is confined to the object and the provisions of the Act itself. Thus the word sufficient cause in section 4 sub-clause (1) and (3) would have to be determined with reference to the definitions given in section 2(b), (c), (d), (f) and (g) of the Act as discussed above. In other words, what the statute requires is that the Tribunal should find out whether or not there are cogent reasons or sufficient materials to prove that the individual or association sought to be banned under the impugned notification falls within the definition of unlawful activity as given in section 2(f) of the Act. It is not within the province of the Tribunal to take circumstances outside the ambit of the Act in order to find out as to whether or not there are sufficient reasons to confirm the notification. In other words,

once the Tribunal accepts the evidence produced by the Government to prove that the individual or association banned falls within the mischief of section 2 of the Act, then there is sufficient cause for confirming the notification. If the Tribunal finds that there is no reliable evidence to prove that the association or individual falls within the definitions given in section 2 of the Act, then there is no sufficient cause and the notification has to be cancelled. Thus the question of the constitutionality of the Act itself as violative of Articles 14 and 19 or the question of malafides are in the opinion of the Tribunal foreign to the scope of the proceedings before it. The word "sufficient cause" therefore merely indicates that the Tribunal has to see as to whether or not there are sufficient materials to prove that the association was guilty of an unlawful activity so as to be banned by the Government under section 3 of the Act. If this was not the intention of the Parliament then section 3 would have been rendered nugatory and the object of the Act to provide for a preventive statute could not be carried out. Mr. Beg submitted, however, that even if an association is proved to be an unlawful association within the meaning of section 2(g) of the Act, the Tribunal can still refuse to confirm the notification if there are other reasons to show that there was no justification for the notification inasmuch as the association did not indulge in any violent or anti-social acts. The Tribunal is however unable to agree with this contention for the reason already given, namely, that the scope of the word "sufficient cause" is restricted to the proof of unlawful activity of an unlawful association defined in 2(f) and 2(g) of the Act. It seems to the Tribunal that the main object of the Act is to punish anti-national acts at the very inception and to ban an individual or an association which has for its object any anti-national act, irrespective of the means which it adopts to achieve the said act. With this initial discussion of the provisions of sections 2 and 4 of the Act, the Tribunal would now go to the analysis of the evidence produced by the parties.

7. *Analysis of the evidence of the parties.*—Issues No. 1 and 2 are interconnected and will be taken up together.

In order to prove its case the Government has examined, 16 witnesses, namely, CWs 1 to 16 and has produced a large number of documents which will be discussed hereafter. Apart from the documents, the Government has also produced sealed tapes containing the tape recorded speeches made by Sheikh Sahib, Mr. Beg and Mr. Shah on various occasions. By an order of the Tribunal, the Government was directed to keep the tape recorders ready to play the tapes if and when necessary but as Mr. Beg did not question the correctness of the speeches relied upon by the Government, it was not necessary to play the tape-recorders with the tapes filed by the Government. The defendants examined only one witness and that was Mr. Beg himself, who is the President of the Front. The defendants have also filed the English version of the Constitution of the Front as also a copy of the petition under Article 32 of the Constitution of India which they had filed before the Supreme Court.

Since the photostat copies of the speeches relied upon by the Government have been exhibited as Exhibits 100—113 after having been proved by large number of witnesses appearing for the Government, the Tribunal would refer to these speeches rather than to the original scripts which also are Exhibits.

It may be stated that Mr. Beg said that he had no objection to these speeches being marked exhibits in this case.

Ex 100. This is a photostat copy of the script of the speech delivered by Sheikh Sahib at Kishtwar on 1st June, 1970. This speech was proved by CW.3 Shri D. N. Kaul whose shorthand notebook is Ex. 45 and it was endorsed by CW.9 Shri Nassirudin Dar, the endorsement being Ex. 45(b). The speech was tape recorded and the spool is Ex. 42 which was recorded by CW.2 Mr. Satvir Gupta. Ex. 43 is the application given for keeping the speech in safe custody and its endorsement is Ex. 43(a) which is proved by CW. 1 Mr. Surjit Singh. Mr. Surjit Singh in his evidence stated that the shorthand books were produced before him by Mr. D. N. Kaul, Sub-Inspector and the application Ex. 43 was also submitted to him by Mr. Satvir Gupta along with the spool. The witness has further stated that Mr. D. N. Kaul was working as shorthand reporter at the meeting and after the documents were handed over to him, they remained under his custody until produced before the Tribunal. The witness on being cross-examined stated that there was no initial or signature of anybody on the script page-wise. He further admitted that he did not prepare any notes of the speeches while they were delivered. Finally, he stated that after his transfer to Raiouri he had kept the documents closed in an almirah under lock whose key was with him. Thus, the material as proved by this witness does not

appear to have been shaken in cross-examination. In fact, in the course of the arguments, Mr. Beg did not doubt the authenticity of these documents as also the statement of this witness. In this speech, Sheikh Saheb begins with delivering a religious sermon on various aspects of life as preached by Islam. Then in the course of the speech, Sheikh Saheb reiterates the fact that he had worked for the freedom of India and Pakistan but unfortunately the partition in 1947 brought about dislocation of lakhs of people of all castes and creeds on both sides. The speaker then praised the role of Mahatma Gandhi after independence and referred to the desire of Mahatmaji that there should be mutual cooperation between India and Pakistan in so many matters. The speaker further referred to the fact that Gandhiji used to say that India, Pakistan and Kashmir were three limbs of the body and could not be severed. The speaker then laid emphasis on the fact that both India and Pakistan should settle their differences and remove the infirmities from which they are suffering and he wanted the people to look at the Kashmir problem from this angle. Sheikh Saheb then goes on to say that whereas Pakistan claims Kashmir as its own part and India as its integral part, the only solution to solve this problem is to make a referendum to the people on the subject as to whether they would like to go to Pakistan or India, and thus the occasion for the plebiscite arises. Sheikh Saheb stated that this matter cannot be decided by India or Pakistan unilaterally, but has to be decided by the people of Kashmir alone. The tenor of this portion of the speech clearly indicates that the speaker does not subscribe to the view that Kashmir is an integral part of India, but advocates the fact that the future of Kashmir is uncertain and has to be decided by the people of Kashmir. In other words, the speaker clearly hints that Kashmir may accede to Pakistan if people so choose to do. Sheikh Saheb then takes care to mention that when he talks of the people to decide the future of Kashmir, he refers not to the Muslims alone, but also to Hindus and Sikhs who are equally entitled to decide their future as the majority community (Muslims). He further says that there is no going back from plebiscite and hints that there is also a third alternative which is that the people of Kashmir might choose their own path without going either to Pakistan or India. Sheikh Saheb then reiterates that Pakistan is a necessary party to the dispute. Sheikh Saheb then goes on to hint at the fact that just as a big power like the British had to bow down before the Indian freedom movement, India might have to bow down before Kashmir for it cannot suppress the people of Kashmir by force. The speaker further repeats the fact that the future of Kashmir cannot be decided by India or Indian army or Pakistan or Pakistan army, but only by the 40 lakhs of Kashmiris. The speaker then goes on to level a bitter criticism of Jan Sangh and its activities. Sheikh Saheb then refers to the fact that when partition took place, the people of Kashmir said that neither India nor Pakistan were their enemies and they would decide their own future after thinking over this matter. Sheikh Saheb reiterated that the right to decide the future of Kashmir belonged to the people of Kashmir and to nobody else. The speaker then traced the history of freedom movement in Kashmir starting from 1931, and then stated that he tried his best to find an honourable settlement of Kashmir because according to him, India and Pakistan were like two elephants between whom if Kashmir is caught it will be destroyed and enslaved. The speaker further gave vent to his feelings that the people of Kashmir should be given a free and impartial opportunity to express their views and after that if the people chose to remain with India he would have no objection. Thus the speaker clearly expressed his views that Kashmir is not the integral part of India at all unless the people through a plebiscite decide to remain with India.

The speaker further complained that India today was denying to the Kashmiris their right to decide their future and had forgotten its past promises. The speaker then goes on to state that the people of Kashmir would not give up their right due to coercion or force and it was for the protection of their rights that the Front had been established at various places and it is this organisation which is fighting for this cause. It would thus appear that Sheikh Saheb has clearly supported and sympathised with the Front in very clear terms and has told the people that the Front is an all India organisation which is fighting for this cause. The speaker then exhorts the people to strengthen the hands of the Plebiscite Front and to work only for the Front and cast their votes in the elections in accordance with the directions of the Front. The speaker then indicates the Hazratbal well incident and refers to communal riots in some parts of India and then deals with the question of Hindu-Muslim unity in the State. Lastly, the speaker reiterates that the question should be solved in a calm and peaceful atmosphere and an honourable solution which is acceptable to both India and Pakistan should be found out. Analysing the entire speech, therefore, the following points emerge:—

- (1) That the future of Kashmir is still undecided.

- (2) That Kashmir is neither a part of India nor a part of Pakistan.
- (3) That Kashmir is a disputed problem and can only be solved by plebiscite held in a free and calm atmosphere.
- (4) That the Front is an organisation which stands for plebiscite and people should strengthen it and give every possible cooperation to it.

Ex. 191.—This speech was delivered by Sheikh Saheb at Naqshband Saheb (Srinagar) on 13th July 1970. CW. 6 Shri Abhimaneau prepared the script and the shorthand notebook is Ex. 50 and the endorsement thereon is Ex. 50(d) by CW 11 Shri Tej Krishan Raina. The spool in which the speech was taped is Ex. 81 which is recorded by CW. 7 Shri Janki Nath. The application handing over the script spool etc. is Ex. 72 bearing the endorsement Ex. 72(a) by CW. 4 Shri G. R. Wani, S. P., C.I.D. The first part of the speech contains a moral sermon to the people to improve their habits and manners and an appeal to them not to create unnecessary troubles and disturbances. The speaker asked the people to be alert and careful and not to choose the wrong path. Thereafter the speaker goes on to criticise some of the political leaders and their ideologies. The speaker then gives his own version of the political history of Kashmir leading to his arrest in 1953. He then throws a concealed hint regarding the manner in which India tried to play with the honour of the people by subjugating them to such an extent that they became entirely dependent on India. The speaker then refers to the Hazratbal relic incident and the events following it. Lastly, he refers to the use of the Preventive Detention Act and the false allegations levelled against him and Mr. Beg. Sheikh Saheb fully supports the Plebiscite Front and exhorts the people to strengthen its hands because that is the only organisation which can protect and guarantee the prestige, honour and freedom of the people. According to him all the other organisations were selfish. The speaker then goes on to praise Mr. Beg and narrates his contributions and asserts that Mr Beg was one of his great supporters. Sheikh Saheb then exhorts the people to present a united front for their object and expressed the resolution of the people that every child of Kashmir will lay down its life but will not give up its right (meaning plebiscite). The speaker then challenges the veracity of the statements made by leaders of India that Kashmir is an integral part of India and tried to impress on the people that nobody would be allowed to challenge the right of Kashmiri people and gives his own example by saying that although he was in prison and made to suffer lot of troubles, he had not given up his stand. He then reads an Urdu couplet which runs thus:—

कश्मीर के ख़ातिर दमन मर चाहिए तो मर देगे हम,

जो फैसला होना लही वो फैसला का देगे हम !

(That is to say, the people are prepared to lay down their lives for the sake of protecting Kashmir and they have firm determination to decide what has henceforth remained undecided.) The speaker further reiterated that he would not allow anybody to sell over Kashmir at his own sweet will. The speaker thus clearly hints at the fact that there is a dispute about Kashmir which is to be decided and no price is higher to achieve this end. Sheikh Saheb then narrates the fact that he is getting threats from official quarters but assured the people that he was not a person who would surrender to such empty threats. Lastly he appealed to the youth of Kashmir to have complete confidence in the Front which will take them to the right path. Thus summarising the speech made by Sheikh Saheb the following inferences are derived:—

- (1) That the Front is the only organisation which can lead the people to the right path and which should be given every possible cooperation.
- (2) That the people should be prepared to offer any sacrifice for achieving their goal, namely, freedom from the yoke of India.
- (3) That Kashmir is not an integral part of India and its future is yet to be decided.

Ex 102.—This is a speech delivered by Sheikh Saheb at Shabi Masjid on 9th August, 1970. It has been written by CW. 6 Shri Abhimaneau. The shorthand notebook is Ex. 60 and the endorsement on the same is Ex. 60(d) proved by CW. 11 Shri T. K. Raina. The spool containing the tape recorded speech is Ex. 60 and was recorded by CW. 7 Shri Janki Nath Kaul. The application by which it was given to CW 4 Shri G. R. Wani is Ex. 71 and the endorsement on the application by Shri Wani is Ex. 71(a).

The speaker starts by narrating the significance of 9th August day and while explaining the significance of the so called black day, the speaker states that he has learnt to his detriment that a weak person should not trust any promise or agreements made by any authority howsoever high even if the authority is an international body. The speaker thus hints at the promises made by Prime Minister Nehru and other leaders regarding the fact that final accession of Kashmir will be decided through a plebiscite. The speaker then goes on to deliver a long sermon on the ethics of keeping one's promises and quotes several incidents from Islamic scripture. Sheikh Sahab then goes on to trace the history of Kashmir freedom movement right from 1931 and criticises leaders like Bakshi Ghulam Mohd and others. He then appeals to the people to improve their habits, to shun opportunism and to unite themselves under one banner so as to make themselves strong. The speaker then reiterates that the Front is the only organisation which can protect the people from the fire which is likely to engulf the entire State. He further praises the activities of the Front and appeals to the people to strengthen its hands, for according to him that is the only organisation which can deliver the goods. The speaker criticised the statement of Prime Minister Nehru that plebiscite was a joke and urged the people to prove that it is a reality. The speaker then refers to the malpractices adopted by the State Government in the panchayat elections. He concludes his speech by asserting in forceful terms that unless the people maintain their honour and vindicate their prestige, they would not rest in peace and a time would come when India would be forced to fulfil its promises but that would be possible only if the people would remain united. Thus the points made out by Sheikh Sahab in his speech may be summarised as follows:—

- (1) The speaker traces the past history of the freedom movement in Kashmir.
- (2) He criticised the political leaders and praised the role of the Front and asked the people to strengthen its hands.
- (3) Expressed determination of the people to force India to give freedom to Kashmir.
- (4) The idea of restoring freedom by allowing Kashmir to decide its future by plebiscite appears to be the main purport of the speech.

Ex. 103—This is the record of the speech delivered by Sheikh Sahab at Tral (district Anantnag) on 27th November, 1970. The original script prepared by CW. 6 is Ex. 66(a) and its shorthand notebook containing the speech is Ex. 66. Endorsement by the magistrate CW. 13 Shri Ghulam Mohd. Butt is Ex. 66(d) and the spool containing the speech is Ex. 86 which was recorded by CW. 5 Sami Nand Rai. The application given to Mr. G. R. Wani for safe custody is Ex. 77 and the endorsement of Mr. Wani is Ex. 77(a).

The speaker starts by delivering a religious sermon and asking the people to improve their moral habits and manners. The speaker makes several references to the Islamic scriptures and exhorts the people to purify their souls. The speaker then goes on to criticise his erstwhile colleagues and political leaders and brings into limelight the manner in which his colleagues had betrayed him in 1947. He then exhorts the people to build up an ideal national character and to follow the teachings of the Holy Prophet and his disciples. Sheikh Sahab then levels a very serious criticism of the events of 1953 leading to his arrest and refers to the malpractices adopted by the State Government after his arrest. Sheikh Sahab then reiterates that neither he nor Mr. Beg have ever said that Kashmir should accede to Pakistan but have only asserted the fact that the State of Kashmir being their own house, the people have the right to decide whether they should accede to Pakistan or India or remain independent. According to him it is the fundamental right of the people to decide their future and it is also a fundamental right to choose any one of the three alternatives as promised by the Indian leaders and on the basis of which Kashmir allowed the Indian army to enter the State. The speaker then states that it is for the coming generation to decide the future of the State, that is whether they would link themselves with India or Pakistan or would like to remain independent. He further reiterated that Kashmiris have undoubtedly a right to decide their fate and this right could not be given to anybody else. He then praises the role of the Front and asks the people for their support. He then reiterates that Kashmir is our country and we alone have a right to decide its future and unless this end is achieved the movement would continue. He further states that the Front is the only pillar of the honour and prestige of the people of Kashmir and asks the people to strengthen its hands because in the success of the Front lies the success of the people. He then appeals to the people to vote for the Front. The speaker then

goes on to narrate the flood havoc of the East Pakistan and asks the people to contribute liberally so as to relieve the miseries and sufferings of the people of East Pakistan. He then goes on to state that Kashmiris are neither the slaves of India nor of Pakistan. They have been demanding the right of self determination ever since the year 1931. He makes reference to the promises made by the Indian leaders in the past and says that no nation can be suppressed by force. Finally, he appealed to the people to contribute liberally for the construction of a new mosque at Hazrathal and thanked them for their generous donations. He ends up by giving religious instructions to the people and by assuring them that their miseries would soon be removed. The points which emerge from his speech for the purpose of this case are as follows:—

- (1) A general exhortation of the people to improve their moral and national character.
- (2) Reminding India of the past promises regarding plebiscite, made by it.
- (3) Appreciation of the role played and services rendered by the Front and an appeal to the people to strengthen its hands.
- (4) Reiteration of the right of self determination of the people.

Ex. 104.—This is the record of the speech delivered by Sheikh Saheb at Baramulla on 20th December, 1970. The original script of the speech was prepared by CW. 6 Shri Abhimaneau and is Ex. 68(a). The shorthand notebook is Ex. 68 and the endorsement thereon is Ex. 68(d) and (e) by CW, 10 Shri Hakim Hasan Ali. The spool containing the tape recorded speech is Ex. 78 and is recorded by CW. 5 Shri Nand Raj. The application for safe custody is Ex. 69 and it contains endorsement of CW. 4 Shri G. R. Wani Ex. 69(a).

Sheikh Saheb starts his speech with a reference to the greatness and leadership of Mahatma Gandhi and praises the principles for which he stood. He also thanked Mahatma Gandhi and other Muslim leaders for the support given to him in the freedom struggle started from 1931 to 1947. The speaker reiterates that at the time of partition when the two dominions of India and Pakistan came into being, it was for the 50 lakhs of Kashmiris to decide whether they should accede to Pakistan or India, but due to disturbances it was difficult to decide this question. Accordingly, the people told India that this question would be decided by Hindus, Muslims and Sikhs of Kashmir after calm is restored in the valley. The speaker reiterated that this was the fundamental right which resided in the people of Kashmir and nobody could take it away. Sheikh Saheb further stated that it was this right of self determination for which the people fought right from 1931. The speaker goes on to say that after 1947, the Kashmiris insisted that they should be given the right to decide their future without any external pressure but Pakistan did not accept this suggestion because of the two nation theory. The speaker then goes on to narrate the Pakistani raid at Baramulla in 1947 and its aftermath. The speaker then states that at that time India appreciated the stand of Kashmir and declared that it was the right of the people of Kashmir to decide their future and this right was accepted not only by India but also by other big powers like the America. The speaker regrets that when the time for fulfilling promises came, Mahatmaj was dead and the moral character of India deteriorated with the result that India did not want to withdraw from Kashmir. The speaker then narrates some personal incidents and discussions which he had with some members of the Bar of Rajasthan and other places regarding the intention of India to grab Kashmir. The speaker then stated that it was in the midst of a very serious crisis that the Front was founded by Mr. Beg who was a person of sterling qualities. The speaker complimented the Plebiscite Front and praised the achievement of Mahatma Gandhi but criticised the activities of the Government after 1947 and insisted that it would be Plebiscite Front alone which could give free and honourable life to the people. He assured the people that once the nation becomes awake and conscious, it could resist the army and the Front under the leadership of Mr. Beg could guarantee their freedom and honour. The speaker then goes on to criticise the Congress and other parties laying special stress on the purity of one's national character and he illustrated his point by quoting examples of the Holy Prophet and his teachings. Sheikh Saheb then goes on to address a religious sermon exhorting the people to lead a pious life and offer regular prayers. Sheikh Saheb then refers to his release in 1964 and his efforts in bringing about good relations between India and Pakistan. He praised the qualities of Shri Rajagopalachari and made casual reference to the communal incidents in Ahmedabad and other places. He then gave a lecture on the philosophy of secularism and its various aspects. He sums up his speech by saying that the people are ready for any sacrifice in order to free themselves from the shackles of India and will not

allow India to grab them. Thus the main points made in this speech so far as this case is concerned are as follows:—

- (1) There is a general reference to Mahatma Gandhi and the great national character of Indians built by him which appears to have been deteriorated after his death.
- (2) Laying stress on the freedom movement ever since 1931 and asserting the right of self determination after 1947.
- (3) Reference to the promises made by Indian leaders in Parliament and outside and ending up with the determination of freeing Kashmir from the shackles of India.

Ex 105—This is the record of the speech delivered by Mr. Beg at Kishtwar on 1st May, 1970. The original script of the speech was prepared by CW. 3 Shri D. N. Kaul and is Ex. 47 and the shorthand notebook in which the speech was taken is Ex. 46. The endorsement on the shorthand notebook is Ex. 46(d) by CW. 9 Shri Nassirudin Dar, Tehsildar Magistrate. The spool containing the tape recorded speech is Ex. 42 and it was recorded by CW. 2 Shri Satvir Gupta. The application for safe custody is Ex. 43 and its endorsement by CW. 1 Shri Surjit Singh is Ex. 43 (a).

The speaker after thanking the people for the vast gathering clarifies the goal of the Plebiscite Front which was to achieve the right of self determination, that is to say that the right of the people of Kashmir to decide their future. The speaker criticised the other political parties and exhorted the people to fight for their right in a determined manner. He appealed to the people to fight for this high objective in order to vindicate their prestige because the right of self determination is the right of the 50 lakhs Kashmiris belonging to any caste, creed or religion whether in Kashmir or in the Pak-occupied territory. The speaker then goes on to applaud the work of the Front workers and compliments them for exercising a good deal of self restraint. The speaker goes on to state that the goal of the Front is to secure honour and freedom for everybody whether he is a Hindu, Mahajan or Sikh. The speaker then makes passing reference to the communal disturbances at Ahmedabad and other places and criticises the Government for not allowing Begum Abdullah to meet her children. He makes casual references to what he considers malpractices adopted by Bakshi Ghulam Mohd. as revealed by Ayyanger Commission. He levels serious criticism of the policies followed by Mrs. Gandhi as also the malpractices used in the elections. He then criticised the action of the Government in indoctrinating the people of Kashmir by holding out temptations of lucrative services and persuading them to assert that Kashmir is an integral part of India. Thus the speaker clearly hints at the fact that Kashmir is not an integral part of India. The speaker then goes on to tell the students to help the Front and to seek its cooperation whenever they are in difficulty. The speaker further assured them of giving complete freedom of thought and expression. Finally, the speaker ends up by asking people to vote for the Front and make it successful in the forthcoming elections. Thus the short points made out by the speaker so far as this case is concerned are as follows:—

- (1) Assertion of the right of self determination.
- (2) Praising the work of the Front and its workers and asking the people to vote for it.
- (3) Assertion of the fact that Kashmir is not an integral part of India and criticising the Central Government for what he calls indoctrinating the people of Kashmir.
- (4) Passing references to the communal disturbances at Ahmedabad and other places.
- (5) An assurance that the Front would ensure complete freedom of thought and expression and the students should fully cooperate with it.

Ex. 106—This is the record of the speech delivered by Mr. Beg at Naqshbandi Sahab (Srinagar) on 13th July, 1970. The original script was prepared by CW. 6 Shri Abhimaneau and is Ex. 50 (b). The shorthand notebook containing the script is Ex. 50 and the endorsement is Ex. 50(d) by CW. 11 Shri T. K. Raina. The spool containing the speech is Ex. 81 and it was recorded by CW. 7 Shri Janki Nath Kaul. The application for safe custody is Ex. 72 which bears the endorsement Ex. 72(a) by CW. 4 Shri G. R. Wani.

The speaker opens his speech by referring to the history of the freedom movement of Kashmir since 1931. Referring to the significance of 9th August day, he asserts that the correct slogan of the people was that plebiscite should be held at once and Sheikh should be released. The speaker explains that plebiscite is nothing but the right of self determination, that is to say, allowing the people to exercise their free vote as to whether they would accede to India or Pakistan or they would decide their own future. According to the speaker, this is a right which should be exercised by the 45 lakhs people of Kashmir. The speaker then referred to the martyrs who laid down their lives in the disturbances following the arrest of Sheikh Saheb in August 1953. The speaker then goes on to say that the people have been deprived of their freedom and in the course of freedom struggle the Kashmir question cropped up and this question implies three alternatives, namely, whether the people should join India or Pakistan or choose some other alternative. The speaker then referred to the promises held out by Prime Minister Nehru and Lord Mountbatten regarding the exercise of the vote of the people freely and regretted that India had not fulfilled its promises. He then criticised the political leaders who maintained that there was no Kashmir dispute. The speaker then criticised the apathy of the Central Government towards the State for not establishing any permanent industry and for misusing the machinery provided by the Jammu and Kashmir Preventive Detention Act. The speaker then relates the achievements of the Sheikh Ministry from 1948 to 1953 and the conspiracy of Bakshi Ghulam Mohd. in overthrowing it. Mr. Beg ends up by criticising the liberalization policy of the State Government and exhorted the people to get united and strong. Thus the points made out in the speech may be summarised as follows:—

- (1) Special stress has been laid on the right of self determination which is equivalent to plebiscite, that is to say, giving an opportunity to people to exercise their right freely whether to accede to India or Pakistan or choose some other path.
- (2) The speaker constantly reminds India of past promises for plebiscite.
- (3) The speaker does not agree with the stand that there is no Kashmir dispute.
- (4) Serious criticism of the Central Government for not establishing any permanent industry in the State.
- (5) A bitter criticism of the liberalisation policy of the State Government.

Ex. 107.—This is the record of the speech delivered by Mr. Beg at Katritang (Bijbehra, Anantnag) on 31st March, 1970. The script has been prepared by CW. 6 Shri Abhimaneau and is Ex. 59 (a). The shorthand notebook containing the speeches is Ex. 59 and the endorsement by CW. 12 Shri Ghulam Qadir Paradesi is Ex. 59(d). The spool containing the tape recorded speech is Ex. 79 and the speech was recorded by CW. 7 Shri Janki Nath Kaul. The application for safe custody is Ex. 70 and the endorsement thereon is Ex. 70(a) by CW. 4 Shri G. R. Wani.

The speaker begins with criticising the attempts of the Centre in not giving a clean Government to the State and referred to malpractices adopted by Bakshi Ghulam Mohd. The speaker further criticised the Central Government for making fresh encroachments on Article 370 of the Constitution of India. Mr. Beg then refers to the resolutions of United Nations Organisation of 1948 and 1949 and says that this was the historical decision which cannot be effaced. He reminds the people of the promises made by Indian leaders in 1947 and also referred to the speech of Mr. Gopalaswamy Ayyanger and asserted that it is an undisputed fact that the leaders of India had maintained that it was for the people of Kashmir to decide their own future. The speaker then exhorted the people to remember the importance of 9th August day and to strive for achieving the right of self determination and to get over any temptations or difficulties which people may have to face. He ends up by asking the people to unite against the common enemy. The summary of the main points hinted at in the speech are as follows:—

- (1) A criticism of the Central Government for not giving a clear Government to the State.
- (2) A reference to the U.N.O. resolution of 1948 and 1949 regarding plebiscite.
- (3) Reference to the promises made by the Indian leaders for holding a plebiscite.
- (4) An appeal to the people to work for the right of self determination by uniting themselves against the enemy.

Ex. 108.—This is the record of the speech by Mr. Beg delivered at Naubug (Kund) on 13th September, 1970. The original script was prepared by CW. 6 Shri Abhimaneau and is Ex. 62(a). The shorthand notebook containing the speech is Ex. 62 and Ex. 62(d) is the endorsement on the shorthand notebook by CW. 8 Shri Niranjan Nath Hali. The spool containing the tape recorded speech is Ex. 87 and is recorded by CW. 5 Shri Nand Raj and the application for safe custody is Ex. 73 and the endorsement thereon by CW. 4 Shri G. R. Wani is Ex. 73(a).

The speaker starts by narrating the rigors of winters and criticising the Government for its apathy to the conditions of the people and not providing relief to the people against the severity of winters. The speaker further expresses his inability to do anything constructive in view of the difficulties and showed his sympathy to the people and prayed for their good and asked them to trust in God. The speaker then continues to harp on the old tune that the people have been deprived of their freedom and the promises made by Pandit Nehru for a free and impartial plebiscite have not been kept. Mr. Beg criticised the stand of the Government that people had already voted for accession with India and asked the people to proclaim to the world whether or not it was a fact that they had really exercise their right to vote. He maintained that whatever has been said at home and abroad is absolutely false and the fact of the matter is that not a single person in Kashmir has been consulted on the question of plebiscite. He then cited various verses from Quran and Hadis to prove that falsehood never thrives. The speaker then refers to the circumstances leading to the arrest of Sheikh Saheb in 1953 by the conspiracy of Bakshi Ghulam Mohd. and others and the confinement in jail for 14 years. He further revealed the fact that after the release of Sheikh Saheb and other leaders Prime Minister Nehru called Sheikh Saheb to Delhi in order to find a solution of the Kashmir problem. He then adverts to the earthquake in Kashmir in 1947 and asserts that although the Government of India sent Rupees 15 lakhs as relief, the workers of the Congress and other officers misappropriated the whole amount and the people continued to live in abject poverty. The speaker then referred to the malepractices in the elections and expressed great surprise that the people were sometimes supporting the Congress and sometimes the Front. He further exhorted them to stick to one path which is being shown by the Front and Sheikh Saheb. The speaker then criticised the various communal parties like Jan Sangh and expressed his apprehension that these parties wanted to create similar conditions in Kashmir which should be resisted by the people by presenting a united front and by rallying round Sheikh Saheb. He appealed to every child, young and old of Kashmir to strengthen the hands of the Front. He further appealed to the people to persuade the non-muslims also to join the Front because the association also stood for their good. He then expressed the hope that the Front would be ultimately successful. The main points referred to in his speech may be summarised as follows:—

- (1) Criticising the State Government for not providing proper facilities to the people against the rigors of the winters.
- (2) Reference to the promises made by Nehruji for a plebiscite.
- (3) Reference to the events leading to the arrest of Sheikh Saheb in 1953 and to the fact that Sheikh Saheb was called by Panditji after his release to find a solution of the Kashmir problem thereby hinting that the Kashmir dispute still exists.
- (4) Appeal to the people to stick to the path shown by the Front and Sheikh Saheb and to present a united Front against the communal parties like Jan Sangh.

The speech delivered by Mr. Beg is more or less a purely election speech where Mr. Beg has tried to extol his party in order to convince the people that Front is the only party which can deliver the goods. The various references made by the speaker clearly shows that he does not accept accession as an accomplished fact and advocates a plebiscite as promised.

Ex. 109.—This is the record of the speech by Mr. Beg at Hazratbal (Srinagar) on 2nd October, 1970. The original script of the speech was prepared by CW. 6 Shri Abhimaneau and is Ex. 63(a) and the shorthand notebook is Ex. 63 and the endorsement thereon is Ex. 63(d) which is made by Shri M. L. Kaul but proved by CW. 16 Shri Mufti Saifuddin. The spool of the tape recorded speech is Ex. 83 and it was recorded by CW. 5 Shri Nand Raj. The application for safe custody is Ex. 74 and endorsement thereon by CW. 4 Shri G. R. Wani is Ex. 74(a).

The speaker starts with the doctrines and preachings of Islam and narrates the various methods to resist tyranny. Mr. Beg then criticises the liberalisation policy of the State Government and calls it a farce. He appeals to the people to join

the Front and give their whole-hearted support to it in all the elections whether to the Assembly or to any other institution. Referring to the elections of 1962 and 1967 and the Panchayat elections, he called them as illegal. He warned the people that the Congress was trying to make the Front unsuccessful and they should see that this does not happen. He further expressed the hope that by and by the roots of India in Kashmir will be completely destroyed. It may be noted that assertion of this fact clearly shows that the intention of the speaker is not to treat Kashmir an integral part of India because he does not say that the roots of the Congress will be destroyed but says that roots of India will be destroyed. His criticism is not therefore against any political party but against India as a country. The speaker further says that if elections were free and fair then the ballot boxes will contain shoes and nothing else. He further called the slogan of socialism as a farce. The speaker then goes on to say that all the people of Kashmir were given the right to decide their future and that is why Article 370 was inserted in the Constitution of India and expressed the hope that people will exercise their free right and this was the main objective with which Article 370 was incorporated in the Constitution. The speaker then lays stress on the fact that Pakistan is also very much a party to the Kashmir dispute as India and that is why a complaint has been filed by India against Pakistan in the Security Council. The speaker then further elucidates the fact that in the opinion of the Front, it was not possible to eliminate Pakistan, for the good of Kashmir lies in the existence of cordial relations between India and Pakistan. The Front, therefore, he said, advocates permanent friendship between these two countries. He further reiterates that attempt of the Front would be to exercise the right of plebiscite and to attain the goal of self determination and it was with this objective that the Front intends to enter the Assembly. Mr. Beg criticised the false promises made by the Government for election purposes and expressed regret that a constant campaign had been launched by the State Government for prosecuting the Front whose workers were detained and sent to interrogation centres. He then stresses the fact that the Front would stick to its slogan and slogan will be that Kashmir is for Kashmiris and its future will be decided by the Kashmiris alone. The speaker finally refers to the apprehension that the ruling party might adopt malpractices in the coming elections and asked the people to go from town to town and village to village in order to make the Front successful in the elections. The summary of the speech may be described thus:—

- (1) This is an election speech and the speaker has emphasised more than once that Pakistan is a party to the Kashmir dispute.
- (2) There is a repeated reference to the promises made by political leaders for a plebiscite.
- (3) The speaker makes it very clear that the Front stands for the right of self determination, that is the right of the Kashmiris to decide their own future.

In other portions of the speech, there is a criticism either of the policies of the Central Government or of the State Government.

Ex. 110.—This is the record of the speech by Mr. Beg delivered at Kupwara on 11th October, 1970. The original script was prepared by CW. 6 Shri Abhimaneau and is Ex. 65(a). The shorthand notebook containing the speech is Ex. 65 and the endorsement thereon is Ex. 65(d) by CW. 14 Shri Mohd. Amin Andrabi. The spool containing the speech is Ex. 84 and has been recorded by CW. 5 Shri Nand Raj. The application for safe custody is Ex. 65 and its endorsement by CW. 4 Shri G. R. Wani is Ex. 65(a).

The speaker starts by criticising the State Government and its officers for placing obstacles in the way of the Front and preventing it from holding its meetings because they are afraid of the popularity of the Front. The speaker further says that these officers falsely represent to the Central Government that the Front has no backing but despite all this, the speaker asserted that the people stood united behind the Front, and a time will come when India would loose Kashmir as also the money spent on her. This portion of the speech of the speaker clearly shows that he expressed a clear intention that a day will come when Kashmir will cease to be an integral part of India. The speaker then criticises the Panchayat elections and expressed the strong determination of the Front to achieve success in the election of 1972 provided the people stick to their faith. The speaker then refers to the various difficulties of the people, such as, poverty, lack of education etc. Addressing the students the speaker says that the only objective of the Front is that the future of Kashmir be decided by a free and impartial plebiscite. He then referred to the visit of Mr. Balraj Madhok, Jan Sangh leader and the communal frenzy created by it, but praised the Front for maintaining communal

harmony. Finally he asked the people to vote for the Front if they really wanted the right of self determination and wanted to open the road for Pindi. He further asked the people to enrol themselves in large numbers as members of the Front.

This is also an election speech where a general appeal has been made to support and vote for the Front. The points made out in the speech may be summarised as follows:—

- (1) Criticism of the State Government and its officers for placing obstacles and preventing the Front for holdings its meetings.
- (2) An assertion that the entire people of Kashmir stood united behind the Front and the day might come when India might loose Kashmir.
- (3) Criticism of the Panchayat elections.
- (4) A hope that the Front will be successful in the elections of 1972.
- (5) Assertion of the fact that the object of the Front was to secure the right for self-determination by holding a free and impartial plebiscite.
- (6) Reference to the visit of Mr. Madhok and a compliment to the people for maintaining communal harmony.

Ex. 111.—This is the record of the speech delivered by Mr. Shah on 13th September 1970 at Naubug (Kund). The script prepared by CW. 6 Shri Abhimaneau is Ex. 61(a) and the shorthand notebook is Rs. 61, the endorsement thereon by CW. 8 Shri Niranjan Nath Hall is Ex. 61(d). The spool containing the tape recorded speech is Ex. 82 and was recorded by CW. 5 Shri Nand Raj. The application for safe custody is Ex. 73 and the endorsement thereon by CW. 4 Shri G. R. Wani is Ex. 73(a).

This is also an election speech and the speaker asked the people to reform themselves in order to free themselves from the shackles of slavery by India. The speaker goes on to say that if the people could reform themselves and improve their habits then only they can expect help from God. He tried to fortify his reasons by reference to various incidents from Islamic history. Explaining the objects of the Front, Mr. Shah stated that (1) the Front wanted restoration of freedom of Kashmir, (2) friendship between India and Pakistan, (3) Mutual exchange of views between the people of Pak-occupied Kashmir and the State, and (4) opening of the Pindi road. It may be noted that the first object pointed out by the speaker clearly indicates that his party does not consider Kashmir as an integral part of India. The speaker then goes on to extol the contributions made by the Front in maintaining communal harmony and he calls the Front as a true successor of Sheikh Saheb's National Conference. He then vehemently criticised Dr. Karan Singh for having advocated a partition of Kashmir and the speaker reiterated that it was for 40 lakhs of Kashmiris to decide whether they would accept slavery or freedom. The speaker then showered praises on the qualities and leadership of Sheikh Saheb and appealed to the people to stand behind him, and asked them to have blind faith in him despite the persecutions suffered by Sheikh Saheb. The speaker repeated the slogan that "the country is ours and we alone shall decide its future". Finally the speaker appealed to the people to strengthen the hands of the Front and to help its flag flying.

Thus the points made but by the speaker in his speech may be summarised as follows:—

- (1) He explains the objectives of the Front, the foremost of which is securing freedom for Kashmir.
- (2) He praises the Front for maintaining communal harmony.
- (3) He criticised persons who stood for partition of Kashmir.
- (4) He reiterates that Kashmir's future is to be decided by the people of Kashmir.

In short, the speaker criticises the Indian Government and advocates holding of a plebiscite to decide the future of Kashmir and does not accept Kashmir as an integral part of India.

Ex. 112.—It is the record of the speech delivered by Mr. Shah at Kupwara on 11th October, 1970. The script prepared by CW. 6 Shri Abhimaneau is Ex. 64(a) and the shorthand notebook containing the speech is Ex. 64 and endorsement thereon is Ex. 64(d) by CW. 14 Shri Mohd. Amin Andrabi. The spool containing the tape recorded speech is Ex. 84. The application for safe custody is Ex. 75(d).

Mr. Shah starts his speech by tracing the freedom movement right from 1931 cultivating in the disturbances following the arrest of Sheikh Saheb in 1953. The

speaker further criticised the liberalisation policy of the State Government. He further reiterates that the Front was the only organisation which has kept the flag of Kashmir flying high. Mr. Shah then exhorts the people to follow the path shown by Sheikh Saheb and Mr. Beg, i.e. the path of peace and non-violence. The speaker further repeats that these leaders have on more than one occasion demonstrated that they stood for the slogan that "this is our country and we alone shall decide its future." The speaker then announced that the Front had decided to participate in the 1972 elections in order to defeat the Congress. Continuing his speech, Mr. Shah says that the objective of the Front to participate in the elections is to defeat India and to enable the 40 lakhs of Kashmiris to decide freely whether they would go to Pakistan or India or remain independent and this is what the Front proposes to achieve if elected to the Assembly. The speaker then makes a very significant statement that the Kashmiris do not recognise the question of " , i.e. that the fact that Kashmir is an integral part

of India. Finally he asked the people to act with resolve and determination so that they may be able to throw away the shackles of slavery during their life time. The speaker ends up by saying that India should be told in plain terms that Kashmir problem has not been solved and it has to be decided by the people by means of free and impartial plebiscite. Thus, the main points made out in his speech so far as the case is concerned are as follows:—

- (1) The speaker has made it very clear that the Front stands for plebiscite, that the people do not recognise Kashmir as an integral part of India and that the problem of Kashmir is still undecided and has to be decided by plebiscite, and that the people have three alternatives if plebiscite is offered, namely, to go to Pakistan or to India or to remain independent.

Ex. 113.—This is the record of the speech by Mr. Shah delivered at Damal Hajipura on 26th October, 1970. The script prepared by CW. 6 Shri Abhimanau is Ex. 87(a) and the shorthand notebook containing the speech is Ex. 67 and the endorsement thereon is 67(d) by CW. 15 Shri Ghulam Mustafa Khan. Ex. 85 is the spool containing the tape recorded speech which was recorded by CW. 5 Shri Nand Raj. Ex. 76 is the application for safe custody and Ex. 76(d) is the endorsement thereon by CW. 4 Shri G. R. Wani.

The speaker starts by saying that 50 lakhs of Kashmiris consisting of Hindus, Muslims and Sikhs want to demonstrate that they are not a free people and desire to resist the freedom in the same manner as India and Pakistan got in 1947 from the British. The speaker then goes on to state that the accession made to India was only provisional and thereto only three subjects, namely, foreign affairs, communications and defence were surrendered to the Government. Mr. Shah then reminds India of its past promises and stresses the fact that the people want that they should be allowed to decide whether they should accede to India or to Pakistan or remain independent and unless this chance is offered to the people, there cannot be prosperity in Kashmir. Narrating the troubles and worries of the people, the speaker says that "the country is ours and we shall decide its future" and he further emphasised the fact that the Front and its leaders will always remain adamant on this point. The speaker further expressed the view that there was absolutely no question that Kashmir was an integral part of India and Kashmiris would never accept this type of accession. Mr. Shah then refers to the history of freedom movement from 1931 and then announced the decision of the Front to contest election of 1972. Finally, after adverting to a number of facts with which the Tribunal is not concerned, he asked the people to exercise their votes properly otherwise they might continue to remain as slaves for all time to come. Thus, the summary of the points made out by him in his speech is as follows:—

- (1) The speaker asserts the stand on plebiscite.
- (2) He calls accession of Kashmir to India only provisional.
- (3) He suggested that a vote to India would be a vote to slavery, thereby implying that Kashmir is not a part of India but only a colony of it.

The Tribunal has taken care to analyse the speeches in great detail so that it may not be said by the defendants that the speeches were not construed by the Tribunal in their proper context. These speeches were delivered by leaders either in Urdu or in Kashmiri. The Tribunal has reproduced the substance of these speeches in English by making a literal but free translation so that the spirit of the speeches is not missed. These speeches appear to have been delivered from

March 1970 to December, 1970,

8. *Press Notes, Pamphlets, Posters etc. issued by the Front.*—This brings the Tribunal to a discussion of the documents contained in Annexure C, that is to say Exs. 3 to 41. These documents were admitted by the defendants and formal proof having been waived they were marked as Exhibits. Mr. Beg frankly admitted the contents of these documents in the course of his arguments. Thus the authenticity of these documents produced by the Government has not been challenged before the Tribunal.

Ex. 3 dated 14th December, 1969.

This document is a press note issued by the Front containing the statement adopted by the working committee of the Front in its meeting held on 14th December, 1969 at Majahid Manzil Srinagar under the presidentship of Mr. Beg. The statement contains references to various matters like the Israeli-Arab war, Viet Nam massacres etc. with which the Tribunal is not concerned. The statement, however, contains pointed reference to two significant facts mentioned at pp. 2 and 5 of the press note and may be quoted as under:—

"All their difference must amicably be composed, the foremost amongst them being Kashmir. It is the opinion of the Plebiscite Front that without resolving Kashmir, Indo-Pak relations cannot be restored to normalcy. Kashmir can be and should be resolved in accordance with commitment of both. Both are irrevocably bound by their solemn pledge to let the people of the State settle their future by a free and fair vote."

"The Working Committee calls upon its rank and file, other parties wedded to the right of self-determination of the people of Kashmir as also the students and youths of the State of Jammu and Kashmir to close their ranks in order to fight, by all constitutional means, the inequities and injustices indicated above, which essentially flow from refusal to implement the right of self-determination of the people of Kashmir of all regions and of all communities."

(Quotation underlined as in the original statement of the Front).

The statement quoted above clearly brings out the intention and object of the Front.

Ex. 4 dated 8th November, 1969.

This is a press note in Urdu containing a report of the speech of Mr. Shah, General Secretary of the Front, delivered at Doda. In the course of his speech Mr. Shah lays stress on the fact that people want freedom and the Front had been established for the purpose of securing the right of self determination of Kashmiris. The press note further refers to the speech of Mr. Beg wherein he has asserted that the Front would see to it that the fifty lacs of Kashmiris are given an opportunity to exercise their right of self-determination and that would be one of the main endeavours of the Front. A similar statement has been made towards the end of the speech.

Ex. 5 dated 19th January, 1970.

This is a press note in Urdu containing the proceedings of the meeting of the Front held on 18th January, 1970 at Srinagar. Page 2 of the press note refers to the speech of Mr. Shah wherein he has re-iterated that the Front is a popular organization and has come into existence for securing the right of self-determination for fifty lacs of Kashmiris. It is further stated that the Front would stick to its stand and would never abandon it. Similarly it was resolved that unless the Kashmir problem was solved by a free plebiscite there can be no prosperity in Kashmir.

Ex. 6 dated 3rd April, 1970.

This is a press note in Urdu containing the views of Mr. Beg on Kashmir in a speech delivered at Islamabad (Anantnag) Kashmir. The speech contains reference to the promises made by Gandhiji and Pandit Jawaharlal Nehru and other political leaders for holding a plebiscite in Kashmir so as to give the people of the State the right to decide whether they would go to Pakistan or India or remain independent. The speaker goes on to state the right of self-determination does not mean that the State should accede either to Pakistan or to India but it merely means that the people should have the right to decide their future in a free atmosphere.

Ex. 7 dated 7th April, 1970

This is a press note in Urdu reporting the speeches of the leaders of the Front made on the occasion of the Dastar Bandi (ceremony of tying a turban) of Ghulam Mohd. Badrawai. Referring to the speech of Mr. Shah, the note points out that he asserted that the Kashmir question still remained unsolved and had to be decided by the people of Kashmir and the people should always try to shout the slogan: 'This is our country and we shall decide its future'. The press note also refers to the speech of Mr. Beg wherein he had said that he had chosen the path to achieve the right of self-determination

Ex. 8(A) dated 14th April, 1970

This Note was issued by the Front after giving its opinion on the theory of Indianisation of Muslims propounded by the Jana Sangh. The note contains a large number of comments regarding this theory and reference to matters with which the Tribunal is not concerned.

Ex. 8 dated 14th April, 1970.

This is a press note containing important decisions taken by the Front regarding the various problems facing the country and other matters. The note refers to the speech of Mr. Beg wherein while addressing the working committee he expressed his complete agreement with the ideology of Insani Baradari (an organization formed by Khan Abdul Ghaffar Khan popularly known as the Frontier Gandhi), but asserted that it was not possible for the Front to merge with that party because according to him the State had yet to decide its future which had not been done so far. Mr. Beg further reiterated that according to his party's stand the accession of Kashmir to India was only provisional.

The note also contains a reference to the speech of Mr. Shah wherein he asserted that the people of Kashmir have got to exercise their right of self-determination and that the party would never give up its stand.

Ex. 9 dated 20th April, 1970

This is a press note in Urdu issued by the working committee of the Front. One of the resolutions passed in the meeting of the working committee was that the Kashmir issue was a human problem and that both India and Pakistan had decided that Kashmiris should exercise the right and decide their own future. In another resolution which is at page 4 of the press note, it is said that Kashmiris are being denied the right to vote and while claiming that Kashmir is a part of India, the people of the State are not given democratic rights.

Ex. 10 dated 22nd April, 1970

This is a press note in Urdu reporting the proceedings of a public meeting at Anantnag. The press note projects in broad headlines the statement of Ghulam Mohd. Bhadrwai that the Front will continue its relentless efforts to secure the right of self-determination. Furthermore Bhadrwai in his speech said that the freedom struggle will continue until the right of self-determination for the fifty lacs of Kashmiris is finally secured. The leader repeated that the main objective of the Front was to achieve the right of self-determination and this was bound to be achieved if people cooperated with the Front.

Ex. 11 dated 1st May, 1970

This is a press note issued by the Front reporting the tour of Sheikh Sahib and Mr. Beg to Doda. Reporting the speech of Mr. Beg it is mentioned in the press note that Mr. Beg said that the right of self-determination is the birth right of Kashmiris and that the other side should be persuaded to recognize it.

Ex. 12 dated 2nd May, 1970

This also is a press note in Urdu reporting the activities of Sheikh Sahib and Mr. Beg at Kishtwar. Reporting the speech of Mr. Beg, the press note mentions that Mr. Beg said that the people should follow what Sheikh Sahib had said and give every possible cooperation to the Front which is continuing its efforts to secure the right of self-determination which has been snatched away from the people of Kashmir.

Ex. 13 dated 16th May, 1970

This is a press note in Urdu issued by the Front reporting the speeches of the President and the General Secretary of the Front. Mr. Shah said that neither Mr. Sadiq nor India could enslave the people of Kashmir and he appealed to Mr. Sadiq to join the Front and work for the right of self-determination of Kashmiris. Mr. Beg in his speech interpreted Art. 370 of the Indian Constitution in such a way so as to give the Kashmiris the right to cancel all the Indian laws applied to Kashmir before holding a plebiscite.

Ex. 14 dated 18th May, 1970

This is a press note in Urdu containing the speeches of the President and the General Secretary of the Front delivered at Bijbehara (Anantnag). Mr. Beg in his speech stated that those who shouted the slogan of the State being an Atoot Ang (integral part) of India were doing so merely for the sake of getting into power. Mr. Beg assured the people of Kashmir that they shall not rest in peace unless they secure the right of self-determination and the Front will help them in securing this right.

Ex. 15 dated 18th July, 1970

This is a press note in Urdu containing the speech of Mr. Beg in which he criticized the speeches delivered by the Prime Minister of India. Mr. Beg posed some constitutional questions regarding the pledges and promises made by the political leaders of India and maintained that by virtue of Art. 370 of the Constitution of India the accession of Kashmir to India was only provisional. Mr. Beg further reiterated that the Front stood for the right of self-determination and will try to secure this right by constitutional and democratic means.

Ex. 16 dated 24th July, 1970

This is a press note issued by the Front reporting the proceedings of a meeting of a special session of the Front. Mr. Beg in course of his speech stated that the Kashmir question was still pending in the Security Council and that Kashmiris would decide the future of their State. Mr. Beg further asserted that this right of self-determination was recognized by India itself; according to him it was a birth right and the people would have to offer all sorts of sacrifices in order to secure this right.

Ex. 17 dated 22/24th August, 1970

This is a press note in Urdu containing proceedings of a meeting of the working Committee held at Bhadrawah on the 22/24th August, 1970. Speaking at the meeting Mr. Beg said that the main objective of the Front was to secure the right of self-determination which is the birth right of fifty lacs of Kashmiris. Mr. Beg further said that this will be the culminating point of the freedom struggle started in the State since 1931.

Ex. 18 dated 17th February, 1970

This is a press note in Urdu containing the speech of Mr. Beg at Idgah Srinagar. At page 3 of the note Mr. Beg is reported to have stated that Gandhiji had held that Kashmir will be allowed to decide its own future without any external or internal pressure. Mr. Beg further said that Panditji had also said that after the raiders had been driven out of the State, the Indian army would be withdrawn so that Kashmir was in a position to decide its own future. The speaker regretted that these promises had not so far been fulfilled. He further reiterated that the right to decide the future of Kashmir was the birth-right of Kashmiris and that this right was recognized both by India and Pakistan. Mr. Beg then asserted that the real question as to whether Kashmir should remain separate from India or go to Pakistan or remain independent or neutral was only a casual matter. The main question, according to him, was that the people of the State should be given an opportunity to express their views freely on what they intended to do.

Ex. 16 dated 24th July, 1970

This is a press note in Urdu issued in connection with the observance of the so-called Black Day. (9th August 1953). While criticizing the arrest of Sheikh Sahib in 1953 Mr. Beg said that at that time there was a duly elected Assembly and that the Indian Government should have got a vote of no-confidence passed against the Prime Minister (Sheikh Sahib) for removing him instead of putting him under arrest.

(Note: It may be noted here that coming as it does from the mouth of the President of the Front, the statement is extremely significant and meaningful because Mr. Beg at least admits this much that the Constituent Assembly was a only elected Assembly and it was this Assembly which as pointed out by the Tribunal in an earlier part of its judgment, had ratified Kashmir's accession to India. In other words there is a tacit admission by the President of the Front that the Constituent Assembly was a duly elected Assembly. If this duly elected Assembly subsequently ratified Kashmir's accession to India, then the promises made or the pledges given by the political leaders of the country were completely fulfilled, because the duly elected representatives of the State finally decided to accede to India).

Continuing his speech Mr. Beg said that the right of self-determination is the only right which ensures the honour and prestige of a man and the Front is determined to strive for this right so that the State of Jammu and Kashmir is able to decide its own future freely.

Ex. 20 dated 18th October, 1970

This is a press note in Urdu reporting the proceedings of the meeting of the Front at Jama Masjid Kupwara. Mr. Shah stated that if the people stood united behind the Front, then there was no reason why India could not concede the right of self-determination to Kashmiris as promised. Mr. Beg then exhorted the people to defeat the ruling party by rallying round the Front in order to achieve the right of self-determination. Finally Mr. Beg assured the people that the Front would continue its efforts until it is able to secure its goal.

Ex. 21 dated 12th October, 1970

This is a press note in Urdu reporting the proceedings of a meeting of the working committee of the Front held on 10th October, 1970, at Jama Masjid Kupwara. The press note mentions that after the leaders arrived, the audience welcomed them and wished a long life to the Front. The people further shouted: "This is our country and we shall decide its future." The press note further reports the speech of Mr. Shah who asserted that the Front had come into existence only for the purpose of securing the right of self-determination for the people of Kashmir, and this right could be secured only if the people strengthened the hands of the Front. Mr. Beg in his speech reiterated that the Front was out to strive for a higher status for the people (meaning the right of self-determination). The press note contains a large number of other matters like fire incidents, bad roads in Doda etc., with the Tribunal is not concerned.

Ex. 22 dated 11th October, 1970

This is a press note in English containing the proceedings of a meeting of the working committee of the Front at Kupwara. The committee expressed its grave concern at the deadlock in resolving the Kashmir dispute and observed as follows:—

"The committee views with grave concern the continued deadlock in resolving the Kashmir dispute and the agonising delay in conceding the right of self-determination to the people of the State, to whom an irrevocable pledge was given by not only India and Pakistan but also by the World Body that the citizens of the State will be given full opportunity to settle their political future without internal or external pressure,

x x x x x

We, therefore, earnestly plead with leaders of both the countries to close up their ranks and compose their differences, and solve their problems in which Kashmir is foremost."

The above press note clearly illustrates the aims, objects and ideology of the Front.

Ex. 23 dated 10th December, 1970

This is a press note in Urdu reporting the proceedings of a public meeting held by the Front at Idgah Batote. Mr. Beg in his speech as reported in the press note at page 2 declared that election was no substitute for a plebiscite because, in his opinion, for holding a plebiscite, Pakistan was a necessary party. Mr. Beg reiterated that the people wanted that the state of suspense should be

ended and the sword of Damocles hanging over them should be removed. The Indian leaders continued to harp on the tune that Kashmir is an integral part of India although this was not a fact.

Ex. 24 dated 14th December, 1970

This is a press note in Urdu reporting tour by Sheikh Sahib and Mr. Beg of the central part of the valley. Mr. Beg in his speech stated that Mr. Nehru had declared that the Kashmir Assembly would have no right to decide the question of accession ex-parte because there were three parties to the issue, namely, India, Pakistan and Kashmir, and the Kashmir problem can be solved only if all the three parties sit together to decide the matter. Mr. Beg reiterated that it had been repeatedly asserted that the accession of Kashmir to India was only provisional and was subject to a plebiscite. Mr. Beg further said that merely by calling the State an integral part of India it did not become so.

Ex. 25 dated 21st December, 1970

This is a press note in Urdu reporting the proceedings of a meeting of the Front held at Baramulla. Mr. Beg in his speech reminded India of her past promises and said that these promises had not so far been fulfilled and regretted that India was out to deprive Kashmiris of their birthright. Sheikh Sahib in his speech said that the forty lacs of the people of Kashmir should be given an opportunity to decide their own future in a free atmosphere. He reiterated that people would rather die than submit themselves to slavery.

Ex. 26 dated 2nd December, 1969

This is a poster in Urdu wherein the slogan 'This is our country and we shall decide its future' is projected in broad headlines.

Ex. 27 dated 16th February, 1970

This is a poster in Urdu issued on the occasion of the Il-ux-Zuha. The poster mentions that the Front is the only popular organization in the State which is continuously striving for the exercise of the right of self-determination.

Ex. 28 dated 16th April, 1970

This is a poster giving the programme of the tour of Sheikh Sahib and Mr. Beg in Doda, but it does not contain anything material for the purpose of this case.

Ex. 29 dated 8th July, 1970

This is a poster in Urdu issued on the occasion of the Id-uz-Zuha. The poster Martyrs' Day (13th July, 1931) mentions that the right of self-determination is the birth right of the people and that the people are bound to attain freedom. The slogan: "This is our country and we shall decide its future" is also mentioned in the poster.

Ex. 30 dated 11th August, 1970

This is another poster containing a similar assertion and quotes a couplet in Urdu as follows:—

Translating in English the couplet means:

"People are prepared to lay down their lives for the sake of protecting Kashmir and they have a firm determination to decide what has henceforth remained undecided."

This poster clearly illustrates the ideology of the Front.

Ex. 31.

This is a poster in Urdu assuring the leaders of the Front that people are prepared to offer any sacrifice to secure the right of self-determination.

Ex. 32 dated 6th January, 1970.

This is a pamphlet in Urdu regarding Panchayat elections held in Kashmir and contains two broad headings at the tops (1) 'Long live the right of self-determination' and (2) "This is our country and we shall decide its future." The pamphlet

recites that the people of Kashmir have been promised the right of self-determination and this promise has not so far been fulfilled. It was reiterated that election is no substitute for a plebiscite.

Ex. 33 dated 15th January, 1970

This is another pamphlet in Urdu which merely contains the biography of Sheikh Sahib on his 64th birthday. The pamphlet does not contain anything material to this case.

Ex. 34 dated 21st May, 1970

This is a pamphlet in Urdu containing the speech of Sheikh Sahib on the occasion of the Hussain Day. The speech deals with the life and teachings of Hazrat Imam Hussain and makes a casual reference to the problem of Kashmir. At page 13 of the pamphlet Sheikh Sahib declares that Kashmir has still a separate status and the Kashmir question has not so far been decided. Sheikh Sahib repeated that it is for the people of Kashmir to decide their own future, i.e., to which country they should accede. In another part of the speech Sheikh Sahib appealed to the people to strengthen the hands of the Front and not to crush the voice of truth. He also refers to other matters which are not relevant for the purpose of this inquiry.

Ex. 35.

This is a booklet issued on the occasion of 65th birthday of Sheikh Sahib containing the important events of his life. At page 7 the booklet mentions that the accession of Kashmir to India is only provisional and is subject to a plebiscite. At the end of the booklet, certain extracts from the speeches of Sheikh Sahib are quoted in one of which Sheikh Sahib says that those who want them to be silent do not want a peaceful solution of the Kashmir problem. He further asserts that if the accession was final and irrevocable, then he would not have spent 11 years in jail. It would thus appear that the Sheikh clearly holds the view that the accession of the State to India is only provisional and not final.

Ex. 36 dated 18th January, 1970

This is a pamphlet in English containing the statement adopted by the Working Committee of the Front on 18th January, 1970. At pp. 1 and 2 the Working Committee resolved as follows:—

* * *

“No friendship is possible between them (India and Pakistan) unless the Kashmir dispute is solved according to the free and fair vote of the people of the State.

* * *

“We reiterate that people of Kashmir would be legally and constitutionally justified to ask India to ‘Quit Kashmir’ and to withdraw army from the State.

* * *

Plebiscite Front demands from the Government of India to fulfil its pledges at once and allow the people of this State to determine their political future according to the principle of free and fair vote.”

These statements clearly show the aims and objects of the Front.

Ex. 37 dated 12th April, 1970

This booklet is in English and contains the proceedings of the Working Committee of the Front held on 12th April, 1970. The following resolutions are pertinent:—

* * *

“Kashmir is essentially a human problem and both the countries are pledged to resolve it in a democratic manner and let the people of the State determine the future by a free vote.”

* * *

“We have made no secret of the fact that our objectives in contesting elections are *inter-alia*, to advance the cause of self-determination by constitutional methods, to struggle for bringing about amicable relations between India and Pakistan, to get the Pindi road opened and to fight against the recrudescence of communal riot in India. We are wedded to these objectives both by our tradition and training as well as by our Constitution that governs our public conduct.”

Ex. 38 dated 24-1-70

This is a pamphlet in English containing the economic consequences of Kashmir in the present political set up, issued by Mr. Beg President of the Front. The relevant passages may be quoted thus:—

"The Sword of Damocles is still hanging, entailing chronic instability and embittering the relations between the two. The commitments and pledges of plebiscite made by both the countries to the people of Kashmir have not been implemented.

"The people of Kashmir have not for the last twentyone years been able to enjoy the fruits of freedom, as their basic right of self-determination continues to be denied to them.

"As has been explained above, by our accession to India, Kashmir has become one of the inferior places for a round-the-world tourist to visit, which does not fit in his regular programme. If we were lined with Karachi, an international Airport, the visitors could straightaway fly to Kashmir and then go to India or countries in the Far East.

"As Kashmir and Kashmiris are directly affected as a result of this stalemate between India and Pakistan, they can play vital role in helping the negotiations to be fruitful, which may even be comparatively more favourable to one party or the other, but a lasting settlement is possible only when India and Pakistan both agree to it."

NOTE.—There is an implied hint that it would have been better if Kashmir had acceded to Pakistan, though this does not appear to be the view of the Front as of the person who has issued the pamphlet, that is to say, it may be Mr. Beg's personal view but not necessarily the view of the Front as an organisation.

Ex. 39 dated 10-3-70

This is a booklet in Urdu explaining the reasons why the Front should participate in the elections. It is mentioned at page 16 (Jeem) that properly elected representatives of the people alone can become an instrument for securing a plebiscite. At page 24 of the booklet it is mentioned that the slogan of the Front would be "This is our country and we shall decide its future." It is further stated that accession is yet to be made and the present accession is only provisional. It is further stated at page 27 that Kashmir's accession to India is purely provisional. The booklet also stresses on the exercise of the right of self-determination and maintains that if the people accede to Pakistan India should have no objection and similarly if the people accede to India Pakistan should have no objection.

Lastly the booklet reveals a firm determination of the Front to secure the right of self-determination.

Ex. 40A dated 13-3-70

This is a booklet in English containing the views of Sheikh Sahib on some vital national issues. The first part of the booklet contains the text of the interview which Sheikh Sahib gave to Shamim Ahmad Shamim editor Aina which does not contain anything particularly material to the facts of the present case. The second part contains the text of the interview of Sheikh Sahib with the editor of the Statesman New Delhi. At pages 16-17 of the booklet Sheikh Sahib while answering certain questions observed as follows:—

Answer: Kashmir undoubtedly is the major irritant that is poisoning the relationship of the two countries. But there may be other points which divide the two countries. We should make an attempt to pinpoint these irritants and try to remove them. The partition was effected in a very shorttime, leaving many vital problems unresolved. The leaders of both India and Pakistan should courageously try to settle all problems which remain unresolved, just as they did the water and border demarcation problems.

Q. Do you suggest any solution?

A. A solution must emerge out of discussion. The best way is the conference-table where the parties to the dispute could discuss various ways to come to a settlement."

In his interviews to the press Sheikh Sahib refers to Kashmir as the major irritant between India and Pakistan and according to him Kashmir continues to be a disputed question.

Ex. 40 dated 13-3-70

This booklet is the Urdu translation of Ex. 40 discussed above.

This is a booklet which contains the speeches of Shaikh Sahib, Mr. Beg and Mr. Shah on the 9th August, 1970 (Black day). The General Secretary Mr. Shah, speaking on the occasion of the Black Day declared that the people should be ready to make any sacrifice for attaining freedom as Majnu did for Laila. The speaker further stated: 'This country is ours and we shall decide its future and expressed the view that he wanted to see the slogan on the lip of everybody.

Shaikh Sahib made reference to the past pledges made by the Indian leaders and regretted that these pledges had not so far been fulfilled. Mr. Beg declared in his speech that the Front had decided to offer any sacrifice that may be necessary in order to secure the right of self-determination.

These are the contents of the various press notes, posters, pamphlets and booklets issued by the Front which are marked Exs. 3 to 41 (Supra).

9. *Constitution of the Front.*—A is the English version of the Constitution of the Front which has been produced in the course of arguments. According to Mr. Beg it is more authentic than the Urdu version which was filed by the Government along with the reference. Virtually both copies are similar.

Art. 1 of the Constitution gives the objects of the Front and runs as follows:—

"(a) With a view to bring about early termination of the political uncertainty in the State, and help establish lasting peace in the sub-continent, there shall be set up a peoples organisation in the State.

(b) This organisation shall be called the Jammu & Kashmir Plebiscite Front.

(c) The aim and object of the Front is to attempt by all peaceful and constitutional means, to bring about early settlement of the question of the State's accession in accordance with the will of the people freely expressed in a fair and impartial plebiscite under the United Nations auspices.

Art. 311 deals with the conditions essential for obtaining membership of the Front. The relevant portion of this Article may be quoted as follows:—

"Every adult citizen of the State, irrespective of caste, creed or sect shall be eligible to the primary membership of the Front if;

(1) He believes in the democratic way of life,

(2) Professes full faith in the right of self-determination of the people of the State, as the final arbiters of their fate,

(3) Recognising the provisional character of the present temporary accession of the State to India, undertakes to endeavour, without fear or favour, by all legitimate means, for the settlement of the accession issue through a free and impartial plebiscite to be held under the United Nations auspices,

(4) Further undertakes to subject himself to the complete disciplines of the Front.

The other Articles deal with other matters with which the Tribunal is not concerned.

10. *Evidence adduced by the Government.*—Apart from the aforesaid documentary evidence, the Government has produced oral evidence of CWs. 1 to 16 which is more or less of a formal character and has been produced in order to prove the speeches delivered by Sheikh Sahib, Mr. Beg and Mr. Shah on various occasions. The photostat copies of the script are Exs. 100 to 113. CWs 3 and 6 are reporters who have written the speeches delivered by the leaders of the Front from time to time at various places. These reporters took down shorthand notes referred to in an earlier part of this judgment. CWs. 8, 9, 10, 11, 12, 13, 14, 15 and 16 are the Magistrates who have put their endorsements on the

shorthand note books. CWs. 2, 5 and 7 are the persons who have tape-recorded the speeches mentioned above. CWs. 1 and 4 are the officers who have endorsed the application for safe custody of the spools and the shorthand note books etc. and have proved that these documents were kept in their safe custody. The veracity of these witnesses has not been challenged before the Tribunal by Mr. Beg appearing for the defendants. This is all the evidence that the Central Government has led in support of its case.

11. *Facts found.*—On a careful consideration therefore, of the evidence, both documentary and oral led by the Government, it is proved beyond doubt that the Front was preaching, propagating and advocating the following theories, ideologies, cults and claims:—

- (1) That the Front stood for the right of self-determination of Kashmiris (plebiscite and would not rest until this was secured).
- (2) That the future of Kashmir could be decided only by the people and none else.
- (3) That the past promises made and pledges given by the political leaders of India from time to time regarding a fair and impartial plebiscite had not been fulfilled and must be carried out.
- (4) That the accession of Kashmir to India is only provisional and therefore Kashmir cannot be said to be an integral part of India unless a plebiscite is held.
- (5) That Pakistan also is a necessary party to the plebiscite and therefore election to the Assembly is no substitute for a plebiscite.
- (6) The maintenance and the restoration of cordial relations between India and Pakistan.
- (7) That the Front should achieve its goal of a plebiscite through peaceful and constitutional means.
- (8) That the Front should always strive to maintain absolute communal harmony between the various communities.
- (9) That Sheikh Sahib through his speech from the platform of the Front and also interviews to journalists and in expression of his opinion on vital national issues has fully endorsed the stand and the ideology of the Front and is not only its ardent supporter but also its strong protagonist and has thus completely identified himself with the aims and objects of the Front.

12. *Defendants' Evidence.*—12. As against this, the defendants produced only one witness, namely, Mr. Beg President of the Front. In his deposition Mr. Beg stated that the accession of Kashmir to India in 1947 was provisional subject to a plebiscite and in view of this stalemate his party realized that there was political uncertainty about the future of Kashmir which was adversely affecting both the administrative and public life in general. Mr. Beg further stated that he was with Sheikh Sahib in the Government and he found that the Government faced considerable difficulty stemming from the non-finalization of the accession issue. Mr. Beg then goes on to state that he brought the matter to the notice of the Central authorities, but they categorically ruled out a decision by the Constituent Assembly in regard to accession and one occasion Prime Minister Nehru was angry with his colleagues when they mentioned finalization of the accession by ways other than a plebiscite. Mr. Beg then refers to various promises made and pledges given by Indian leaders at home and abroad regarding a plebiscite. Referring to the proceedings of the Constituent Assembly Mr. Beg complains that he along with Sheikh Sahib was not even allowed to attend the session of the Constituent Assembly and the so-called motion against the then Prime Minister of Jammu and Kashmir (Mr. S. M. Abdullah) was actually discussed in absentia. Mr. Beg then narrates the history of Kashmir after the arrest of Sheikh Sahib and concludes: "The story makes a grim reading but is symptomatic of what is happening in Kashmir." The again complains that when there were earthquake tremors in Kashmir in 1967, about fifty lacs of rupees were sent by the Central Government but the money was not distributed amongst the

sufferers and most of the amount was mis-spent. Mr. Beg then maintains that it was because of these sufferings and compelling circumstances that his party was constrained to ask the Central Government for finalization of the issue of accession and he strongly asserted that neither he nor any of the bearers of the Front had made any speech that Kashmir be handed over to Pakistan, which, in his opinion, would amount to secession or cession.

Explaining the object of the Front, Mr. Beg stated that the idea was not that Kashmir should accede to India or to Pakistan, but the central idea was that the people of Kashmir should have the right to decide their future as promised. Mr. Beg maintains that his party was a non-communal political party with a secular outlook.

In cross-examination Mr. Beg stated that the Front was established in August 1955 with him as the President and soon thereafter he along with other members of the working committee were put behind the bars and were not allowed to participate in the elections of 1957, 62 and 67. Meanwhile, according to Mr. Beg, vested interests in Kashmir became deeper and more widespread and the Kashmir Government resorted to malpractices in the Panchayat elections. Mr. Beg then admits that the Act was enacted in December 1967 and purports to have been extended to the State in 1969, though in his view it was extended in 1967. Mr. Beg further admits that even after the application of the Act to Jammu and Kashmir the Front continued to operate under its Constitution Ex. A. I and II. Mr. Beg further admits that the Front had been propagating and canvassing even in 1969-70 that the people of Kashmir should be allowed to decide through a plebiscite as promised to them earlier whether Kashmir should accede to India or Pakistan or remain independent so as to make the issue of accession final and irrevocable. Mr. Beg further admits that the active members of the Front were propagating this ideology until the Front was banned.

13. Summing up defence evidence.—Analyzing therefore the evidence of Mr. Beg, the following position emerges:—

- (1) That the Front wants to end the uncertainty prevailing in Kashmir by advocating a free and impartial plebiscite.
- (2) Under the aforesaid plebiscite it shall be open to Kashmiris to decide any of the three alternatives: (a) Accession to India (b) Accession to Pakistan and (c) Independence.
- (3) That the accession of Kashmir is only provisional and not irrevocable.
- (4) That the Constituent Assembly had no right to ratify the accession as promised by P. M. Nehru.
- (5) That the promises made by P. M. Nehru, Gandhiji and Sir B. N. Rau and others had not so far been fulfilled.
- (6) That the Front had been propagating the aforesaid objectives even in 1969-70 until the Association was banned by the impugned Notification.
- (7) That the Front was a non-communal political organization with a secular outlook.

This is all the evidence led before the Tribunal by the parties. The Tribunal has already discussed the evidence of the parties in the preceding paragraphs which clearly shows that there is not a large amount of disagreement between the parties on some vital issues.

So far as the case of the Government that the Front had been advocating a plebiscite that it did not recognize the accession of Kashmir to India as irrevocable, that it worked for the achievement of the right of self-determination by a plebiscite under which Kashmir could accede to India or Pakistan or remain independent, is concerned, these facts have no doubt been admitted in the clearest possible terms by Mr. Beg in his evidence and by the recitals in the documents Exs. 3 to 41 (Supra), the provisions of the Constitution of the Front (Ex. A Art. 10) and the speeches delivered by the leaders of the Front from time to time as also the press notes etc. issued by the Front. It will, however, be pertinent to note that some more allegations had been made by the Government in their plaint against the defendants which have not been proved at all. For instance, the Government had pleaded that the Front was receiving aid from Pakistan. This allegation was emphatically denied by the Front and no evidence whatsoever was adduced by the Government to prove it. Secondly, the Government has not adduced any evidence to show that the Front for achieving its goal or promoting its object resorted to any violence or anti-social activity or act or sabotage. On the other hand the

evidence adduced before the Tribunal clearly shows that the leaders of the Front gave a specific direction to the people that they should achieve their goal of self-determination through peaceful and constitutional means.

Another important case made out by the Front in their written statement has been proved by the evidence adduced by the Government itself. The Front has taken the stand that it is a non-communal organization with a secular outlook and an analysis of the speeches (Supra) clearly discloses that whenever references have been made by the speakers to the people, they include not only the Muslims of Kashmir but also the Hindus, Sikhs and other communities. Furthermore the allegation of the Government that the leaders appealed to the religious susceptibilities of the people and tried to exploit politics in the name of religion has also not been proved. It is true that in most of the speeches reference to incidents from Islamic history and religious scriptures have been made, but if read in the proper context there does not appear to be any intention to exploit religion for the sake of politics. The crowds which were addressed to by the speakers consisted mainly of members of the Muslim community and there was no harm in telling them the precepts, teachings and sayings of the holy Prophet or His disciples in order to enable them to get a sort of religious instruction so as to add to their religious knowledge. But this is quite different from saying that their religious susceptibilities were aroused in order to take advantage of the political ideologies of the Front. In the opinion of the Tribunal this important and serious allegation made against the Front has not been proved.

Another allegation made by the Government against the Front was that it had taken within its fold secessionist elements. There is, however, no evidence to indicate that this is so. On the other hand, if the Front had really encouraged secessionist elements, then one would not have expected it to follow the path of peace and calm in the achievement of its objective. The Front in its written statement and Mr. Beg in his evidence categorically referred to the fact that in a number of incidents of a serious nature resulting from law and order problem the Front leaders helped restore peace to ease the situation, for instance, in the case of the Regional Engineering College disturbances, the Idgah firing, the Stadium incident etc. The Government has not produced any rebutting evidence to falsify the specific pleas taken by the Front and proved by it.

Some exception appears to have been taken by the Government to the statements made by the speakers whereby they insisted on the opening of the Srinagar-Pindl road as also to vehement criticism of the policies of the State and the Central Governments. On a perusal of the speeches, however, it is manifest that the observations made by the speakers fall within the domain of fair and legitimate criticism of the policies of the Government and fair express of opinion. For instance according to the leaders of the Front the opening of the Pindl Road would have improved the economic conditions of the State by increasing trade between the two parts. This opinion may or may not be correct, but it cannot be said to come within the purview of an unlawful activity as contemplated by S. 2 of the Act.

Furthermore the attention of the Tribunal was drawn to the fact, that the speakers had on more than one occasion to warn the people to take serious note of communal riots in various parts of India. This statement also cannot be wrenched from the context, because the speakers in their speeches made it clear that despite communal riots taking place in various parts of India, the people of Kashmir should not shake off their traditional secularism and should try to maintain communal harmony at any cost. This is a very laudable objective and in the opinion of the Tribunal no exception can be taken to it.

Finally another allegation made by the Government against the Front was that it wanted to fight the elections of 1972 with a view to entering the Assembly and wrecking the Constitution from inside. This allegation also, in the opinion of the Tribunal, has not been proved. Mr. Beg in his speeches has made it very clear that he wanted to fight the elections within the frame work of the Constitution and therefore the question of wrecking the Constitution did not arise. As to what steps the Front would have taken if voted to power was a very remote consideration and would not be hit by S. 2 of the Act.

In view of these facts, therefore, Mr. Beg put forward a very attractive argument that as the Front has not been proved to have indulged in any violent act of sabotage and has used peaceful and constitutional methods in propagating its ideology and objects, there is no sufficient cause to ban it. On a close scrutiny of

this argument, however, it seems to the Tribunal that this argument is inconsistent with the provisions of S. 2 of the Act. The Tribunal has already discussed the scope and ambit of Ss. 2 and 4 of the Act in para 6 of the judgment and has pointed out that the intention of the Act was to curb an Association which has an unlawful object irrespective of the method which is employed by the Association to achieve the said object. But there must, however be some evidence to indicate that some action was taken by the individual or the Association to promote its object, for instance propagation by speeches or circulation by posters, booklets, press notes etc., as in the present case. If only the Constitution of the Front would have been produced and nothing else, then there would have been no evidence to show that there was any act to promote the object and the Association could not have been banned merely on proof of the constitution of the party. In other words once it is proved that the Association has an unlawful object and preaches cession or secession and advocates the same through overt acts, then it follows directly within the mischief of Ss. 2(f) and (g) of the Act and the fact that the means adopted by the party were peaceful or that the party had a secular outlook would be of no consequence in determining the validity of the Notification made by the Central Government under S. 3 of the Act. The reason for this is not far to seek. The Unlawful Activities (Prevention) Act as would appear from the title is purely a preventive statute and its intention is to prevent an individual or Association from indulging in anti-national activities or believing in anti-national ideologies. Suppose the argument of Mr. Beg is accepted; the position would be that an Association may have an unlawful object and therefore it would be an unlawful Association and yet it goes on propagating its ideology to the people at large without committing any act of violence and takes recourse to peaceful means, but so long as the means adopted by the party are peaceful and constitutional the party cannot be banned. Suppose at a later stage the party indulges in violence and resorts to acts of sabotage, then by the time the party is banned it would be too late and sufficient harm would have been done to the country. It was therefore thought necessary by Parliament to pass an Act to curb the actions of a party or an individual which indulges in unlawful activity.

The next argument put forward by Mr. Beg was that since there was nothing to indicate that the Front had incited the people to vote for Pakistan or for independence and had done nothing to persuade the people not to vote for India, the Association cannot be said to be guilty of cession or secession as defined in S. 2(b) and (d) of the Act. This argument, in the opinion of the Tribunal, is partly tenable and partly untenable. So far as cession is concerned, the Tribunal is clearly of the opinion that the aims, objects and the ideology of the Front do not bring its case within the definition of cession as given in S. 2(b) of the Act. The word 'cession' as used in S. 2(b) implies that there should be a positive act by which a part of territory of India is being ceded to some other country or that there is an admission of the claim of any foreign country to any such part. In none of the documents or the evidence adduced before the Tribunal has it been alleged that the Front ever supported the claim of any foreign country on Kashmir, nor is there any evidence to indicate that there was any act which purported to hand over a part of the territory of India to some other country. Nevertheless, the acts of the Association clearly come within the purview of secession because this includes the assertion of any claim to determine whether such part might or might not remain a part of the territory of India. Thus the so-called right of self determination which is strongly sponsored by the Front clearly implies that if this right is exercised by the people of the State, there is a possibility that Kashmir may or may not accede to India and therefore this course clearly contemplates that Kashmir may cease to be a part of India which clearly falls within the mischief of the word 'secession' as defined in S. 2(d) of the Act. Furthermore by sponsoring a plebiscite or right of self-determination by the people of Kashmir the Front clearly suggests a course of action by which the State may or may not remain an integral part of India and this doubtless tantamounts to disrupting the sovereignty and territorial integrity of India. Putting it would indicate that if the Front advocates a plebiscite under which Kashmir may or may not remain a part of India then this act amounts to the assertion of a claim as contemplated by S. 2(d) of the Act. For these reasons and in view of the findings given by the Tribunal in para 11 (1—5) of its judgment, the Tribunal is satisfied that there is sufficient evidence to prove that the Front is an unlawful Association indulging in unlawful activity as defined in Ss. 2(f) and 2(g) of the Act.

15. It will also be pertinent to note an important argument advanced by Mr. Beg in support of his case. Mr. Beg submitted that in view of the past promises made and pledges given by Prime Minister Nehru and other political leaders of

India and in view of the special constitutional relationship of Kashmir with India the defendants were mis-led under a *bona fide* mistake that an element of uncertainty over the accession issue still persisted and it should be ended by holding a plebiscite. In other words Mr. Beg put forward a plea of *bona fide* claim or right. Mr. Lal rebutting the argument of Mr. Beg submitted that no such plea was put forward by the defendants in their written statement and therefore they should not be allowed to argue this point. A perusal of the written statement clearly shows that, this plea has been taken by the defendants though not in very clear terms, merits serious consideration. Indeed if the defendants were under a *bona fide* impression that the issue of accession was not a closed one, then it should not have taken them much time to realize that their impression was absolutely wrong when the Act was applied to the State of Jammu and Kashmir so far back as 1st September, 1969. Even Mr. Beg in his evidence has clearly admitted that after the application of the Act to Kashmir the Front went on propagating its object. Apart from this the words 'which is intended or supports any claim, to bring about on any ground whatsoever.....' the secession of a part of the territory of India from the Union' appearing in S. 2(f) (i) clearly postulate that no grounds whatsoever would be a defence to and justification for an act of secession. Even assuming that the promises and pledges were there, that would be no justification for the Front to preach secession after knowing that the Act had been applied to the State of Jammu and Kashmir and that the definition was wide enough to cover the act. To put it differently, the effect of the words referred to above is to obliterate and effect the scope of any promises made or pledges given whether incorporated in an agreement or not, so as to bring the act of preaching secession within the mischief of S. 2 irrespective of any motive, background or claim whatsoever. Furthermore, as pointed out by the Tribunal at pp. 65-66 of its judgment, Mr. Beg clearly admitted in his speech dated 9th August, 1970, (Ex. 1 that the Constituent Assembly was a duly elected body and it has been found by the Tribunal that it was this body which ratified the accession of Kashmir to India. Thus the question of accession was settled once and for all and the promises made or the pledges given were duly fulfilled. For these reasons therefore the plea of Mr. Beg on this score is over-ruled.

It was then contended by Mr. Beg that according to the evidence of CW 4 Mr. Wani there are other parties namely the Awami Action Committee, the Political Conference and the Jamait-ul-Islami which also propagate a plebiscite, but none of them has been banned and therefore the action of the Governments violative of Art. 14 of the Constitution of India. Mr. Lal rightly pointed out that the objection as to the necessary fact and particulars in invoking the application of Art 14 had not been pleaded by the defendants in their written statement and therefore no serious notice of this contention need be taken. This is undoubtedly so.

Apart from this, no reliable evidence, oral or documentary, has been adduced by the defendants before the Tribunal to show that they are similarly situated as the Awami Action Committee, the Political Conference and the Jamait-ul-Islami. Neither the Constitution of any of these parties nor any speech, poster pamphlet or press note of any such organization has been produced before the Tribunal to show that they also fall within the ambit of S. 2(g) of the Act. A stray statement made by CW 4 based on his memory does not appear to the Tribunal to be of any consequence, particularly when the witness has not disclosed the source of his information. Furthermore it seems to the Tribunal that the protection of Art. 14 would naturally apply to a lawful activity and not to an unlawful activity. For instance if there are three accused persons out of whom one is challaned, it does not follow that he should not be convicted because of the fact that others have not been challaned. For these reasons therefore this argument of Mr. Beg is also over-ruled.

Lastly it was submitted by Mr. Beg that the action of the Government in banning the Front was actuated by malice and the defendant were banned in order to prevent them from participating in the Parliamentary election of 1971 as also the Assembly election of 1972. In this connection Mr. Beg has given a sequence of dates showing that it was soon after the Front had decided to participate in the elections and after the Parliamentary mid-term elections were notified that the order banning the party came into existence. In the opinion of the Tribunal this argument is without substance. The Act was enforced in the rest of India in 1967 and in the State of Jammu & Kashmir only on 1st September, 1969, i.e., only a few months before the mid-term elections were held and at that time there was absolutely no prospect of a mid-term Parliamentary election to be held at all. The General Elections were still more than a year ahead. The party was banned by a Notification dated 12th January 1971, i.e., about 15 months after the Act was

applied to Kashmir. This delay is clearly explained by the following circumstances:--

- (a) The authority which gave the symbol was the Chief Election Commission which is an Authority separate from the Central Government which had banned the Front.
- (b) The Act having been applied in September 1969 to the State of Jammu & Kashmir, the Central Government must have taken sufficient time to compile and collect the evidence against the Front, particularly when under the provisions of the Act evidence had to be carefully sifted and scrutinized by a high powered judicial Tribunal.

From the documentary evidence produced by the Government it would appear that they have produced documents ranging from the end of 1969 to the end of 1970 and the period of one year for collecting such a huge piece of political literature is not a very long time.

- (c) There were only five Parliamentary seats to be contested from the State out of a total of 521 seats in the Lok Sabha and therefore there was hardly any motive for the Government to ban the Front merely for the purpose of preventing it from participating in the Parliamentary elections, for even if the Front were allowed to contest the elections and was duly elected, it would form an insignificant and an infinitesimal part of the members of the Lok Sabha so as to harm the majority party voted to power.
- (d) The question of *malafides* is foreign to the scope of the inquiry held by this Tribunal which is duty-bound under the Statute to adjudicate as to whether or not there are sufficient reasons for confirming the Notification. If there are sufficient reasons for confirming the Notification the Tribunal cannot refuse to confirm the Notification merely on the ground of *malafides*.

For these reasons therefore the last argument of Mr. Beg is also over-ruled.

16. *Conclusions.*—It has been found by the Tribunal that some allegations of a serious nature against the Front have not been proved [vide paragraph 14 (Supra)]. The Front has also been found to have employed peaceful and constitutional methods to promote its object and it is essentially an organization of a secular character. It has also been found that the Front has on many occasions helped and contributed a lot in the maintenance of law and order and communal harmony. Mr. Beg argued the plea of *bonafide* claim of right to get out of the consequences of the Act, but the Tribunal has over-ruled this plea for the reasons given hereinbefore. The Act has already been applied to the State in 1969 and the Tribunal on a full and complete interpretation of Ss. 2 and 4 of the Act has held that the Front falls within the mischief of Ss. 2 and 4 and is therefore an unlawful Association indulging in unlawful activity. Mr. Beg in his evidence on re-examination categorically stated that his stand was not rigid, and observed:--

"Publicly we had said that our attitude on plebiscite is not rigid, and that through Sheikh Mohd. Abdullah the Central Government could explore other alternatives for finalising the dispute."

In view of these special circumstances, the Tribunal is constrained to observe that if the Front and its leaders accept the accession of Kashmir to India as a *fait accompli*, change their stand and alter their ideology in face of the changed situation and are prepared to throw themselves into the main stream of the political life of the country and its body politic and the Government is convinced of the genuineness of the Front's intentions, the Government may seriously consider the desirability of withdrawing the ban forthwith or in the near future so as to allow the defendants to participate in the democratic process of our great country.

Before concluding this judgment, the Tribunal would like to express its great appreciation of the valuable assistance received from Mr. Beg for the defendants and Mr. Lal counsel for the Government. The Tribunal feels highly indebted to Mr. Beg for his ingenious, pointed and persuasive arguments and for giving full co-operation to the Tribunal in completing the proceedings within the shortest possible time. The Tribunal is also thankful to the staff for having given every possible assistance in terminating the proceedings in the shortest possible time.

Result.—For the reasons given above, issues 1 and 2 are decided in favour of the Government and the declaration that the Front is an unlawful Association made in the impugned Notification No. S.O. 227 dated 12th January 1971 (22nd Pusa, 1892 SF) is hereby confirmed and the reference is accepted. Let the judgment be sent to the Union Home Ministry for publication in the Government Gazette. Let the records of the case be also sent to the Union Home Ministry for safe custody.

NEW DELHI;
15th June, 1971.

(Sd.) M. MORTAZA FAZL ALI,
Chairman,
Unlawful Activities (Prevention) Tribunal.

[No. F. 11/1/71-K (Part I)]

ASHOK SEN, Jt. Secy.

गृह मंत्रालय

अधिसूचना

नई दिल्ली, 1 जलाई, 1971

का० प्रा० 2499.—यतः विधि विरुद्ध क्रिया-कलाप (निवारण) अधिनियम, 1967 (1967 का 37) (जिसे इसमें इसके पश्चात् अधिनियम कहा गया है), की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार ने अखिल जम्मू और कश्मीर जनमत संग्रह मोर्चा को विधि विरुद्ध संगम घोषित कर दिया था ;

और यतः अधिनियम की धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार ने 28 जनवरी 1971 को विधि विरुद्ध क्रियाकलाप (निवारण) अधिकरण (जिसे इसमें इसके पश्चात् अधिकरण कहा गया है) गठित किया था, जिसमें जम्मू और कश्मीर उच्च न्यायालय के मुख्य न्यायाधीश श्री सैयद मुतंजा फजल अली मात्र थे ;

और यतः अधिनियम की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार ने अखिल जम्मू कश्मीर जनमत संग्रह मोर्चा के विधि विरुद्ध संगम की घोषणा के प्रश्न को इस बात के न्यायानिर्णयन के प्रयोजनार्थ कि पूर्वोक्त घोषणा करने के लिए पर्याप्त हेतुक था या नहीं, 8 फरवरी 1971 को अधिकरण को निर्दिष्ट किया था ;

और यतः अधिनियम की धारा 4 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार ने 15 जून, 1971 को ऊपर निर्दिष्ट घोषणा को पुष्ट करते हुए एक आदेश दिया था ;

अतः, अब, अधिनियम की धारा 4 की उपधारा (4) के अनुसरण में केन्द्रीय सरकार एतद्वारा अधिकरण के पूर्वोक्त आदेश को प्रकाशित करती है, अर्थात्—

आदेश

“पृष्ठ देखिए”

[सं० का० 11/1/71-के० (भाग-1)]

अशोक सेन, सयुक्त सचिव ।